

**STRONG OVERSIGHT AT THE DEPARTMENT  
OF HOMELAND SECURITY: A PREDICATE  
TO GOOD GOVERNMENT**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON MANAGEMENT,  
INVESTIGATIONS, AND OVERSIGHT**

OF THE

**COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES**

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## **STRONG OVERSIGHT AT THE DEPARTMENT OF HOMELAND SECURITY: A PREDICATE TO GOOD GOVERNMENT**

**Wednesday, April 25, 2007**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON MANAGEMENT, INVESTIGATIONS  
AND OVERSIGHT,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10 a.m., in room 210, Cannon House Office Building, Hon. Christopher Carney [chairman of the subcommittee] presiding.

Present: Representatives Carney, Thompson, Perlmutter, and Rogers.

Mr. CARNEY. [Presiding.] The subcommittee will come to order.

The subcommittee is meeting today to receive testimony on "Strong Oversight at the Department of Homeland Security: A Predicate to Good Government."

This hearing should not have to take place. Some problems are to be expected when a massive new agency is created—integration difficulties, difficulty defining a cogent mission, even morale challenges. None of these is good, but at least they are understandable.

A persistent and pervasive resistance to legitimate oversight, however, is not. Today, we are going to hear from the GAO about their difficulties obtaining information from DHS, but the problems they have been describing are much broader. DHS's own Office of the Inspector General has said that they have been faced with delays in obtaining information that at times effectively amounted to a roadblock.

Senator Lieberman said that during his committee's Hurricane Katrina investigation last year, the department often took an adversarial posture and ultimately produced only a small fraction of the documents and witnesses that reasonably could have been expected. Senator Lieberman went so far as to request that then-Chairman Collins subpoena the department.

We ourselves see continuing failure to submit required reports to Congress. Indeed, just a few weeks ago, Chairman Thompson and Ranking Member King jointly sent a letter to Secretary Chertoff detailing the most recent failings. And this month, the private Mercatus Center found that the department's annual performance report ranked 22nd out of 24 agencies in terms of communicating information to the public.

(1)

This is completely unacceptable, and it cannot continue. DHS is a troubled agency. Oversight will only and can only make it better. When a house has a bad foundation, you don't fix it by refusing to let the inspector into the basement. You fix it by letting the professionals examine it, assessing the problem, cutting out the rot, and rebuilding stronger.

Since my staff began investigating this issue, Inspector General Skinner has reported that the department has done a 180 and has been cooperating with his fine investigators and his staff. I am very pleased to hear this, and I hope it continues and it spreads. GAO, the Congress and the public need to see the same improvement.

It also needs to last. While I am glad that the IG is seeing the improvement, I hope it doesn't just become a temporary thing. I am worried that the department might just be playing nice because we have been focusing on the issue, and that as soon as our interest is perceived to wane, the department will revert to business as usual. I certainly hope that is not the case.

Undersecretary Schneider, I am glad you are here today. You impressed me as a straightshooter both when we met in my office and later when you testified before my subcommittee. I don't think that you are afraid of oversight. I am hopeful that you can chart a better course for the department.

So before I close, I am going to make a personal request to you, sir. When you get back to the department, please tell your staff or supervisors or counterparts, even the secretary himself, when you get the chance, that our concern over this issue will not wane. Please tell them that I have directed my staff to inquire regularly of the GAO and the Office of the Inspector General about whether they are getting appropriate cooperation from the department. Please tell them that I will be asking Inspector General Skinner to come to me directly if he has any renewed problems. I am asking you to ensure that every corner of the department gets the message that if there is a problem, I will hear about it, which of course means you will hear about it.

It is my sincere hope that I never have to convene another hearing on this subject, but we will be watching. If these problems persist or recur, I will not hesitate to bring you and many more people from the department back here to revisit the issue. If you think we are going to be talking tough today, just wait until the gavel comes down on that hearing.

Thank you. I look forward to hearing your testimony.

I now turn it over to the ranking member from Alabama.

Mr. ROGERS. Thank you, Chairman Carney, for convening this hearing.

I want to thank the witnesses for taking the time to be here with us. We welcome back Undersecretary Schneider and Mr. Rabkin, who have appeared before this committee in the past.

At the outset, I would like to note for the record that this is one of the first, if not the first, hearing held in this committee in the 110th Congress which included bipartisan briefing materials. The bipartisan nature of this hearing underscores the importance of Congress and the inspector general getting the information they need to fulfill their oversight responsibilities.

Rigorous oversight of Federal agencies improves their operations, saves taxpayer dollars, and holds them accountable to the American people. Such oversight is especially important for the Department of Homeland Security, which is the third-largest department in the Federal Government, with an annual budget of approximately \$40 billion. Oversight of this department is also critical because of its mission to prevent terrorist attacks and respond to natural disasters.

Today, we examine the difficulties the comptroller general of the United States and the DHS inspector general are having obtaining information from the department. In February, 2007, both of these officials testified before our full committee and the Appropriations Subcommittee on Homeland Security and raised this issue. As we explore this issue, it is important to remember that DHS is just over 4 years through a complex merger of 22 agencies. Experts have testified that mergers much less complex have taken 5 to 7 years to complete.

In addition, DHS handles matters at all levels of security classification, as well as information covered by the Privacy Act. Therefore, careful scrutiny of the documents and information is not only expected, but demanded by DHS before such material is released. Since February, the subcommittee has been advised that DHS has made progress to improve access to information. In addition, DHS has a new acting general counsel and a relatively new undersecretary for management. Both officials are personally committed to improving the process and taking steps internally to fix any problems.

Today, we will hear from our witnesses about that progress and what additional steps need to be taken to ensure that GAO and the inspector general have timely access to the information needed.

I yield back.

Mr. CARNEY. Thank you, Mr. Rogers.

The chair now recognizes the chairman of the full committee, the gentleman from Mississippi, Mr. Thompson, for an opening statement.

Mr. THOMPSON. Thank you very much, Mr. Chairman and Ranking Member. I am happy to be here for this hearing. I welcome our witnesses. There is no question that sunshine is real important for our government. I am concerned that people who talk about the fact that they welcome oversight sometimes put blinders on from the request standpoint. The GAO, as well as IG, are instruments of Congress. They look at organizations and institutions, and obviously when those requests are made by members of Congress, we expect the job to be performed.

I would not like to see the department stonewall any of these agencies anymore. The public has a right to know. We are spending their money and therefore in return we deserve answers. So I look forward to the hearing, Mr. Chairman, and I yield back the balance of my time.

Mr. CARNEY. Thank you, Mr. Chairman.

Other members of the subcommittee are reminded that under committee rules, opening statements may be submitted for the record.

I welcome the witnesses. The first witness is Mr. Norm Rabkin, the managing director of the Homeland Security and Justice team at the Government Accountability Office. Mr. Rabkin manages GAO's reviews of issues related to homeland security, Federal law enforcement agencies, including the FBI and DEA, the Federal judiciary, and Federal funds provided to state and local law enforcement agencies. Mr. Rabkin was selected into the Senior Executive Service in 1989 and received GAO's distinguished service award in 1999 and 2002.

Our second witness is Hon. Paul Schneider, undersecretary for management at the Department of Homeland Security. Prior to joining the department earlier this year, Undersecretary Schneider was a defense and aerospace consultant for three-and-a-half years, and before that he was a civil servant for 38 years, including serving as senior acquisitions executive of the National Security Agency from October 2002 to September 2003, and more than four years as principal deputy assistant secretary of the Navy for research, development and acquisition.

Without objection, the witnesses' full statements will be inserted in the record. I now ask each witness to summarize his statement for five minutes, beginning with Mr. Rabkin.

**STATEMENT OF NORMAN RABKIN, MANAGING DIRECTOR,  
HOMELAND SECURITY AND JUSTICE TEAM, GOVERNMENT  
ACCOUNTABILITY OFFICE**

Mr. RABKIN. Thank you, Mr. Chairman, Ranking Member Rogers, Chairman Thompson. It is nice to be here this morning. I am pleased to be here to discuss our access to information at DHS.

Almost every engagement we have undertaken at DHS has been at the specific request of the chairman or ranking member of a congressional committee or subcommittee, or has been mandated through the legislative process. We have been very active at DHS as the department deals with issues of major significance to the American public. It was a major merger, as you mentioned, of 22 legacy agencies when it was created in 2003. It receives enormous annual appropriations, and it also has inherited a set of management and programmatic challenges from its legacy agencies.

Since DHS began operations, we have provided major analyses of the department's plans and programs for transportation security, immigration enforcement and benefits, Coast Guard operations, and emergency management. We have also reported on DHS's management functions, such as human capital, financial management, and information technology.

We have processes for obtaining information from departments and agencies across the Federal Government that work well. These processes were developed in accordance with generally accepted government auditing standards. We have shared them with every department and agency in what call our "agency protocols"—a book like this.

We notify agency officials each time we begin an audit. We offer to meet with them to discuss our objectives, scope, our methodology, and our information needs. We are available to provide them with status reports on our work and our preliminary findings.



At all departments and agencies, we expect and usually receive excellent cooperation. Overall, our experience at DHS has not been as smooth. DHS's process involves multiple layers of review by component and department-level liaisons and attorneys about whether to provide us the requested information. We have to submit each request for documents to the component liaison, rather than directly to program officials, even if we have already met with those officials.

The liaisons often refer our requests to attorneys, either at the component or departmental level, sometimes both. The result is that we often wait for months for information that in many cases could be provided immediately. In some cases, DHS does not furnish information until our review is nearly finished, greatly impeding our ability to provide our clients with a full and timely perspective on the program under review.

As we have understood these cases, DHS's concerns have often involved whether they consider the information we have requested to be deliberative or pre-decisional, even though that is not a basis for denying us access. At other times, DHS does not share with us the rationale for not promptly providing the requested material.

We have occasionally worked with DHS management to establish a cooperative process, for example, reviewing sensitive documents at a particular agency location. We have agreed to these types of accommodations for accessing information under certain circumstances because we believe that doing so allows us not only to maintain a productive working relationship with the department, but also to meet the needs of our congressional clients in a timely manner without compromising our auditing standards.

We recognize that the department has legitimate interests in protecting certain types of sensitive information from public disclosure. We share that interest as well, and follow strict security guidelines in handling such information. We similarly recognize that agency officials need to make judgments with respect to the manner and the processes they use in response to our information requests. However, to date because of the processes and the manner in which DHS officials have interpreted and implemented them, we have often not been able to complete our work in a timely manner.

We appreciate the efforts of senior DHS managers, including our official liaison, to listen to our concerns and to try to make the process more responsive. I especially appreciate Undersecretary Schneider's openness and willingness to take on this challenge.

I look forward to working with him and will keep this committee and our other clients in Congress informed of the progress we make.

This completes my statement, Mr. Chairman. I will be glad to answer questions.

[The statement of Mr. Rabkin follows:]

#### PREPARED STATEMENT OF NORMAN RABKIN

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss the subject of access by the Government Accountability Office to information at the Department of Homeland Security (DHS). My statement will provide information on the scope of our work, our protocols regarding how we normally get access to agency information, DHS processes for re-

sponding to our requests, access issues we have encountered at DHS, and, finally, steps we have taken to address these issues.

#### **Summary**

GAO's mission is to support Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. Since DHS began operations in 2003, we have provided major analyses of the department's plans and programs for transportation security, immigration, Coast Guard, and emergency management. We have also reported on DHS's management functions such as human capital, financial management, and information technology.

We have processes for obtaining information from departments and agencies across the federal government that work well. DHS's adopted processes do not work as smoothly. DHS's processes have impeded our efforts to carry out our mission by delaying access to documents that we require to assess the department's operations. This process involves multiple layers of review by department- and component-level liaisons and attorneys regarding whether to provide us the requested information.

We have occasionally worked with DHS management to establish a cooperative process—or example, reviewing sensitive documents at a particular agency location. We have agreed to these types of accommodations for accessing information under certain circumstances because we believe that doing so allows us not only to maintain a productive working relationship with the department but also to meet the needs of our congressional requesters in a timely manner. Further, such a relationship enables us to present the progress and challenges of the department in a clear and impartial manner, so that we can meet our shared objectives of improving our nation's security preparedness.

We recognize that the department has legitimate interests in protecting certain types of sensitive information from public disclosure. We share that interest as well and follow strict security guidelines in handling such information. We similarly recognize that agency officials will need to make judgments with respect to the manner and the processes they use in response to our information requests. However, to date, because of the processes adopted to make these judgments, GAO has often not been able to do its work in a timely manner. We have been able to eventually obtain information and to answer audit questions, but the delays we have experienced at DHS have impeded our ability to conduct audit work efficiently and to provide timely information to congressional clients.

#### **GAO Performs a Broad Range of Work for Congress**

GAO has broad statutory authority under title 31 of the United States Code to audit and evaluate agency financial transactions, programs, and activities.<sup>1</sup> To carry out these audit and evaluation authorities, GAO has a broad statutory right of access to agency records. Using the authority granted under title 31, we perform a range of work to support Congress that, among other things, includes the following:

- Evaluations of federal programs, policies, operations, and performance:
  - For example, evaluations of transportation security programs related to passenger-screening operations at airports, our work to assess enforcement of immigration laws, and our work on the U.S. Coast Guard's Deepwater acquisition to replace its aging fleet.
- Management and financial audits to determine whether public funds are being spent efficiently, effectively, and in accordance with applicable laws:
  - For example, DHS's appropriations acts for fiscal years 2002 through 2006 have mandated that we review expenditure plans for the U.S. Visitor and Immigrant Status Indicator Technology (U.S.VISIT) program.
- Investigations to assess whether illegal or improper activities may have occurred:
  - For example, we investigated the Federal Emergency Management Agency's (FEMA) Individuals and Households Program to determine the vulnerability of the program to fraud and abuse in the wake of Hurricanes Katrina and Rita.
- Constructive engagements in which we work proactively with agencies, when appropriate, to help guide their efforts toward transformation and achieving positive results:
  - For example, we have worked to establish such an arrangement with the Transportation Security Administration (TSA) on its design and implementation of the Secure Flight Program for passenger pre-screening for domestic flights whereby we could review documents on system development as

<sup>1</sup> See appendix I for more information on key GAO audit and access authorities.

they were being formulated and provide TSA with our preliminary observations for its consideration. Congress mandated TSA certify that the design and implementation of the program would meet 10 specific criteria. Congress also mandated that we review and comment on TSA's certification. TSA's certification has not yet occurred.

#### **Auditing Standards and Our Protocols Address Accessing Information**

We carry out most of our work in accordance with generally accepted government auditing standards.<sup>2</sup> Our analysts and financial auditors are responsible for planning, conducting, and reporting their work in a timely manner without internal or external impairments. These standards require that analysts and financial auditors promptly obtain sufficient, competent, and relevant evidence to provide a reasonable basis for any related findings and conclusions. Therefore, prompt access to all records and other information associated with these activities is needed for the effective and efficient performance of our work.

Our work involves different collection approaches to meet the evidence requirements of generally accepted government auditing standards. Such evidence falls into four categories:

- physical (the results of direct inspection or observation);
- documentary (information created by and for an agency, such as letters, memorandums, contracts, management and accounting records, and other documents in various formats, including electronic databases);
- testimonial (the results of face-to-face, telephone, or written inquiries, interviews, and questionnaires); and
- analytical (developed by or for GAO through computations, data comparisons, and other analyses).

We have promulgated protocols describing how we will interact with the agencies we audit.<sup>3</sup> We expect that agencies will promptly comply with our requests for all categories of needed information. We also expect that we will receive full and timely access to agency officials who have stewardship over the requested records; to agency employees responsible for the programs, issues, events, operations, and other factors covered by such records; and to contractor personnel supporting such programs, issues, events, and operations. In addition, we expect that we will have timely access to an agency's facilities and other relevant locations while trying to minimize interruptions to an agency's operations when conducting work related to requests for information.

We provide an appropriate level of security to information obtained during the course of our work. We are statutorily required to maintain the same level of confidentiality of information as is required of the agency from which it is received, and we take very seriously our obligation to safeguard the wide range of sensitive information we routinely receive. For example, we ensure that GAO employees have appropriate security clearances to access information. We also have well-established security policies and procedures.

Timely access to information, facilities, and other relevant locations is in the best interests of both GAO and the agencies. We need to efficiently use the time available to complete our work to minimize the impact on the agency being reviewed and to meet the time frames of our congressional clients. Therefore, we expect that an agency's leadership and internal procedures will recognize the importance of and support prompt responses to our requests for information. When we believe that delays in obtaining requested access significantly impede our work, we contact the agency's leadership for resolution and notify our congressional clients, as appropriate.

#### **DHS Has Implemented Burdensome Processes for Working with GAO**

Unlike those of many other executive agencies, DHS's processes for working with us includes extensive coordination among program officials, liaisons, and attorneys at the departmental and component levels and centralized control for all incoming GAO requests for information and outgoing documents. In an April 2004 directive on GAO relations, DHS established a department liaison to manage its relationship with us. In addition, DHS has a GAO coordinator within all of its components and, within the DHS General Counsel Office, an Assistant General Counsel for General Law who provides advice on GAO relations. According to the directive, the department liaison (1) receives and coordinates all GAO notifications of new work, (2) participates in all entrance conferences, and (3) notifies the Assistant General Counsel of new work to obtain participation of counsel. The directive requires the Assistant

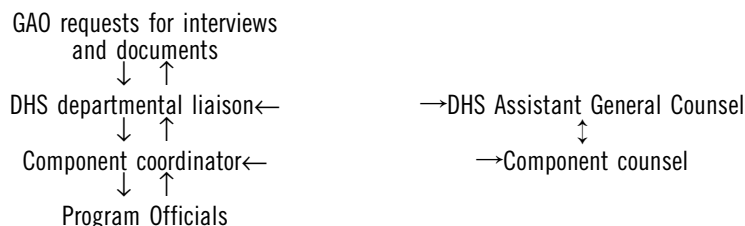
<sup>2</sup>GAO, *Government Auditing Standards, 2003 Revision*, GAO-03-673G (Washington, D.C.; June 2003).

<sup>3</sup>GAO, *GAO Agency Protocols*, GAO-05-35G (Washington, D.C.; Oct. 21, 2004).

General Counsel to participate in all entrance meetings to ensure that the scope of any request is clear and finite, and that mutual obligations between DHS and GAO are met. The component coordinator handles all matters involving GAO for the component, generally participates in GAO entrance meetings, and seeks advice of component's counsel, as appropriate.

The following figure illustrates the coordination of information among DHS officials described above when we make a request for information. Typically when we begin an engagement, we send a letter to the department liaison to notify DHS that we are starting a new engagement and we request an entrance meeting to discuss the work. During the course of our review, we provide written requests for meetings and documents to component coordinators using a DHS-prescribed form. The component coordinators then forward our requests to program officials and consult with component counsel, who may consult with the Assistant General Counsel.

**Figure 1. DHS Process for Working with GAO.**



In a memo that transmitted the above directive to senior managers in DHS components, the then-Under Secretary for Management emphasized the importance of a positive working relationship between the two agencies. The memo stated that failure to meet or brief GAO staffs in a timely manner, as well as being viewed as nonresponsive to GAO document requests, could result in tense and acrimonious interactions. The Under Secretary also reminded senior officials that prompt and professional discharge of their responsibilities to GAO requests could affect both DHS's funding and restrictions attached to that funding.

#### **GAO Has Experienced Difficulties Accessing DHS Information**

In testimony before this committee and the House Committee on Appropriations, Subcommittee on Homeland Security in February 2007, we stated that DHS has not made its management or operational decisions transparent enough to allow Congress to be sure that the department is effectively, efficiently, and economically using its billions of dollars of annual funding.<sup>4</sup> We also noted that our work for Congress to assess DHS's operations has been significantly hampered by long delays in obtaining access to program documents and officials. We emphasized that for Congress, GAO, and others to independently assess the department's efforts, DHS would need to become more transparent and minimize recurring delays in providing access to information on its programs and operations.

At most federal agencies and in some cases within DHS, we obtain the information we need directly from program officials, often on the spot or very soon after making the request. For example, our work on the Secure Border Initiative (SBI) has so far met with a very welcome degree of access to both DHS officials and documents. SBI is a comprehensive multiyear program established in November 2005 to secure U.S. borders and reduce illegal immigration. One element of SBI is SBInet, the program within CBP responsible for developing a comprehensive border protection system of tactical infrastructure, rapid response capability, and technology. The fiscal year 2007 Department of Homeland Security Appropriations Act required that, before DHS could obligate \$950 million of the \$1.2 billion appropriated for SBInet, it had to prepare a plan for expending these funds, have it reviewed by

<sup>4</sup>GAO, *Homeland Security: Management and Programmatic Challenges Facing the Department of Homeland Security*, GAO-07-398T (Washington, D.C.: Feb. 6, 2007); and GAO, *Homeland Security: Management and Programmatic Challenges Facing the Department of Homeland Security*, GAO-07-452T (Washington, D.C.: Feb. 7, 2007).

GAO, and then submit it to Congress for approval.<sup>5</sup> The plan was to be submitted within 60 days of the act's passage.

CBP officials provided us office space at CBP headquarters, gave us access to all levels of SBInet management, and promptly provided us with all the documentation we requested, much of which was still in draft form and predecisional. DHS met the 60-day requirement when it submitted its plan to the Appropriations Committees on December 4, 2006. We met our responsibilities by being able to review the plan as it developed over the 60-day period, and to provide the results of our review to the House and Senate Appropriations Committees on December 7 and 13, 2006, respectively.

In contrast to the access we were afforded in the above example, the process used in most of our interactions with DHS is layered and time-consuming. As discussed earlier, we are asked to submit each request for documents to the component coordinator rather than directly to program officials even if we have already met with these officials. Also as mentioned earlier, the component coordinator often refers our request to component counsel. And the Assistant General Counsel for General Law in DHS's General Counsel's office may become involved. The result is that we often wait for months for information that in many cases could be provided immediately. In some cases, DHS does not furnish information until our review is nearly finished, greatly impeding our ability to provide a full and timely perspective on the program under review.

Each access issue with DHS requires that we make numerous and repetitive follow-up inquiries. Sometimes, despite GAO's right of access to information, DHS delays providing information as it vets concerns internally, such as whether the information is considered deliberative or predecisional. At other times, we experience delays without DHS expressing either a concern or a cause for the delays. On other occasions, DHS is unable to tell us when we might obtain requested information or even if we will obtain it.

We have encountered access issues in numerous engagements, and the lengths of delay are both varied and significant and have affected our ability to do our work in a timely manner. We have experienced delays with DHS components that include CBP, U.S. Immigration and Customs Enforcement (ICE), FEMA, and TSA on different types of work such as information sharing, immigration, emergency preparedness in primary and secondary schools, and accounting systems. I have examples of two engagements to share with you today that illustrate the types of delays we experience and how they have affected the timing of our work.

My first example is of an engagement related to detention standards for aliens in custody, where the team working on this engagement experienced delays of up to 5 months in obtaining various documents. The objective of this work, which is still under way and is being done for the House Committee on Homeland Security, is to assess ICE efforts to review facilities that house alien detainees, determine whether the facilities have complied with DHS standards, and determine the extent that complaints have been filed about conditions in the facilities. Some of the facilities are owned and operated by DHS; others are operated under contract with DHS. In order to determine the extent to which facilities are complying with DHS standards, we requested that ICE provide copies of the reports of inspections it conducted in 2006 at 23 detention facilities. We requested those reports in December 2006 and did not receive the final four of the inspection reports until just last week, after DHS departmental intervention. We had several meetings and discussions with DHS officials including program officials, liaisons, and attorneys, and we were never provided a satisfactory answer about the reason for this 5-month delay. We also experienced delays on this engagement obtaining a copy of the contract for detainee phone services between ICE and the phone service contractor. DHS took 1 month to provide the contract and redacted almost the entire document because a DHS attorney contended the information was "privileged." We followed up with DHS officials to communicate that our authority provided for access to this type of information and then waited another 2 weeks before we were able to get an unredacted copy of the contract.

In another engagement being done at the request of the then-Chairman of the House Committee on Government Reform, we are reviewing an emergency preparedness exercise that DHS conducted in June 2006 called Forward Challenge 06. The purpose of the exercise was to allow agencies to activate their continuity of operations plans, deploy essential personnel to an alternate site, and perform essential functions as a means of assessing their mission readiness. Our objective is to determine the extent to which participating agencies were testing the procedures, personnel, and resources necessary to perform essential functions in their continuity-

<sup>5</sup> Pub. L. No. 109-295, 120 Stat. 1355 (2006).

of-operations plans during the exercise. We began our work a few months before the exercise and had arranged with DHS to observe the actual exercise. However, 2 days before its start, DHS officials told us we would not be permitted to observe the exercise and stated that after completion, they would instead brief us on the exercise and the lessons they had learned from it. They provided that briefing in August 2006, at which time we requested relevant documentation to support the claims the DHS officials made to us.

Subsequently, in November 2006, DHS provided us with one-third of the agency after-action reports we requested but redacted key information, including the identity of the participating agencies. DHS, however, was reluctant to provide us with the balance of the documents requested, stating that it considered these to be “deliberative materials”; and expressing concern that sharing these with us would have a significant and negative impact on participants’ level of openness in future exercises. Despite GAO’s right of access to the information, the involvement of GAO and DHS officials at the highest level, and a letter of support from the former and current chairman of the committee, we did not receive access to the requested documentation until March 2007. Our report for this engagement was to be issued in November 2006; because we did not receive the needed information until March 2007, we will not be able to issue our analysis until later this year.

#### **GAO Has Taken and Suggested Steps to Resolve Access Issues with DHS**

We have made good faith efforts to resolve access issues. Specifically, we have undertaken many steps to work with DHS to resolve delays as expeditiously as possible and gain access to information needed for our work. At our audit team level we have asked staff to set reasonable time frames for requesting DHS to provide information and arrange for meeting and when we encounter resistance, to ensure that the information we request is critical to satisfying the audit objectives. When delays occur, our approach is to involve various management levels at both GAO and DHS, beginning with lower-level managers and working up to the Comptroller General and the Secretary. At each level, our managers and legal staff contact their counterpart liaisons and counsel, component heads, or DHS senior managers, as appropriate, either by telephone, e-mail, or letter, to communicate our access authority and need for the information to satisfy audit objectives. Our communication efforts have generally resulted in obtaining the requested or alternative information, or making other accommodations.

We have proposed to DHS that the department take several steps that would enhance the efficiency of its process. First, our staff should be able to deal directly with program officials after we have held our initial entrance conference. If these officials have concerns about providing us requested information, they can involve DHS liaison or coordinators. Second, to the extent that DHS counsel finds it necessary to screen certain sensitive documents, it should do so on an exception basis. Other documents should be provided directly to us without prior review or approval by counsel. We provide DHS several opportunities to learn how we are using the information its officials provide us—we provide routine updates on our work to program officials; we provide program officials, liaisons, and counsel a “statement of facts”; that basically describes what we learned during the engagement; and we formally provide DHS a copy of our draft report that contains our evidence, conclusions, and recommendations for its comment. There is no reason to hold information back from us when it has been made available to contractors, other federal agencies, state and local governments, or the public, or when its only sensitivity is that DHS considers it confidential or classified. The Secretary of DHS and the Under Secretary for Management have stated their desire to work with us to resolve access issues. We are willing to work with DHS to resolve any access-related concerns. Nevertheless, we remain troubled that the design and implementation of the current DHS process is routinely causing unnecessary delays.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions your or other members of the subcommittee may have at this time.

Mr. CARNEY. Thank you for your testimony.  
I now recognize Undersecretary Schneider for 5 minutes.

#### **STATEMENT OF SCHNEIDER, UNDER SECRETARY FOR MANAGEMENT, DEPARTMENT OF HOMELAND SECURITY**

Mr. SCHNEIDER. Thank you, Mr. Chairman, Chairman Thompson, Ranking Member Rogers and members of the subcommittee. I appreciate the opportunity today to discuss the department’s rela-

tionships with its Office of the Inspector General and the Government Accountability Office.

In nearly four decades of government service, I have developed a deep appreciation of the investigative and audit work that the IGs and GAO conduct. It is through appropriate oversight that government agencies can improve internal processes and programs. As Secretary Chertoff stated during his February 8 congressional testimony, cooperation with these entities is imperative.

The department maintains management directives regarding its interactions and cooperation with the GAO and the IG. The management directive relating to the IG requires DHS employees to cooperate fully by disclosing complete and accurate information to the IG and provide prompt access to any files, records, reports or other information that may be requested by the IG. The management directive on the GAO similarly requires all DHS employees to work cooperatively with the GAO.

Therefore, we believe that the proper framework is already in place as these directives reflect solid concepts and principles of the department's cooperation.

Nevertheless, we must improve our execution. The secretary has already acknowledged that the department's responsiveness is not what it should be, and we are not as timely in our response as we would like to be. We are looking into numerous ways to improve the management processes of the department, including the responsiveness to the GAO and the OIG.

During his February 8 testimony, the secretary acknowledged the need for greater information flow and he has committed to improving this process. For example, he has already put in place a mechanism to create incentives for DHS officials to make information flow to Congress a top priority and has required that employee performance reviews be linked to individual responsiveness to such requests.

With respect to the IG, we are only aware of one situation where the IG has complained about major access issues. This instance related to the IG's investigation of efforts to update the Coast Guard fleet, known as the Deepwater Program. It is my understanding that this issue has been addressed and resolved.

Last Wednesday, I learned that I would be the department's witness for this hearing. In preparation, I read previous testimony, IG and GAO reports. I met with the representatives of all the DHS components and obtained an appreciation for the large number of audits that are currently underway. I also had the opportunity to talk to Mr. Rabkin. He was kind enough to come over and spend a couple of hours with me. I had a pretty detailed discussion earlier this week with Mr. Skinner, the inspector general.

In my opinion, we do not have consistent guidance across the department. Some of the operational components are using procedures and practices that were from their parent organizations before they became part of DHS. The use of these liaison offices in each organization is somewhat inconsistent.

Looking ahead to the future, we are examining ways to improve the speed by which documents and information flow. This includes improving communications, training and outreach to the employees of the department, possibly revamping the organizational structure

or the placement of these liaison offices, both at headquarters and in the operational components, providing additional guidance to department employees on how to interact with the IG and the GAO through further revising or updating instructions to the personnel.

We need to make our expectations more clear to our people on the frontline as to what they can and should provide in response to the IG and GAO requests, with the intent that there would rarely be exceptions to the requests, and that responses must be timely. If there are any exceptions, they need to be identified quickly and resolved quickly.

We must also improve our awareness at the headquarters level of problems that arise so we can take expeditious action to resolve these matters quickly and satisfactorily. The department takes this issue very seriously in examining the best ways to improve the processes.

I have worked with the GAO and IGs for nearly 40 years. Frankly, I have never experienced problems such as the ones that are being discussed today. We need to do a better job of implementing the department's stated principles of full cooperation. I am hopeful that I can bring my experience to bear here and effect the required changes we all think are necessary.

I appreciate the opportunity to be here today, and I would be happy to answer any questions you have.

[The statement of Mr. Schneider follows:]

PREPARED STATEMENT OF PAUL A. SCHNEIDER

Good morning, Mr. Chairman, Ranking Member Rogers and Members of the Subcommittee. I appreciate the opportunity today to discuss the Department's relationships with its Office of Inspector General (OIG) and the Government Accountability Office (GAO). As well, I look forward to clarifying some factual misunderstandings and describing how we intend to improve the process for cooperating with these investigative bodies.

As you know, I am the Department of Homeland Security (DHS) Under Secretary for Management and have served as such for the past four months. Prior to this experience, I was a defense and aerospace consultant for 3-1/2 years and before that, I spent 38 years as a civil servant -working in various positions, including as the Principal Deputy Assistant Secretary of the Navy for Research Development and Acquisition and as the acting Assistant Secretary for a period of time.

In four decades of government service, I have developed a deep appreciation of the investigative and audit work that Inspectors General and GAO conduct. It is through appropriate oversight that Government agencies can improve internal processes and programs.

The nature of the relationship with the DHS OIG and the relationship with the GAO are, of course, different. The OIG is a part of the Department, within the larger executive branch, and the IG is under the supervision of the Secretary of Homeland Security. The GAO is a part of the legislative branch. In the case of both the Department's OIG and the GAO, the Department seeks to handle information access issues in a harmonious manner in accordance with the law.

In this vein, it should be noted that DHS routinely makes its employees and supporting documentation widely available for open, free-flowing exchanges with the GAO and OIG. As the Secretary stated during his February 8 congressional testimony, cooperation with these entities is imperative.

As the Under Secretary for Management, I oversee the Audit Liaison Office at the Department, housed within the Office of the Chief Financial Officer. This Liaison Office helps to oversee the Department's efforts to coordinate and cooperate with the GAO and OIG. Moreover, the Liaison Officer regularly meets with his counterparts at DHS component agencies. In this way, the Department Liaison can communicate DHS goals and objectives with the components' liaison officers.

Although some critics have claimed that the liaison officers get in the way of the process, they are actually useful facilitators of the oversight and auditing functions. For example, the liaison officers help keep track of incoming requests and outgoing



responses, thus avoiding unnecessary duplication, gaps, and inefficiency. The liaison officers understand the landscape of their respective component agency and thus ensure that the GAO and OIG obtain accurate information from knowledgeable personnel. The liaison officers in Washington, DC can also assist in providing physical access to field offices and facilities. Through the liaison offices, we aim to ensure proper accountability through a centralized, coordinated process, and we strive to provide complete, accurate and thorough responses to GAO and OIG requests.

The Department maintains Management Directives regarding its interactions and cooperation with the GAO and OIG. For instance, the Management Directive relating to the Office of Inspector General requires DHS employees to cooperate fully by disclosing complete and accurate information to the OIG and provide prompt access to “any files, records, reports, or other information that may be requested” by the OIG. The Management Directive on GAO similarly requires all DHS employees to work cooperatively with GAO. Therefore, we believe that the proper framework is already in place, as these Management Directives reflect solid concepts and principles of the Department’s cooperation.

Nevertheless, it is these concepts and principles upon which we need to improve our **execution**. The Secretary has already acknowledged that the Department’s responsiveness is not what it should be, and we are not as timely in our responses as we would like to be. We also recognize that there are serious concerns about the execution of the Department’s Directives and objectives. Admittedly, the requirements of the Management Directives have not always been followed, and we need to improve these processes, as indicated by the remarks of the Comptroller General and the Inspector General during their testimony on February 6. While we understand certain of their frustrations, we do not agree with some of their factual assertions, including that lawyers attend every interview and review every document. That is simply not the case. Even so, we understand that we need to do a better job.

We are looking into numerous ways to improve the management processes of the Department, including the responsiveness to GAO and OIG. During his February 8 testimony, the Secretary acknowledged the need for greater information flow, and he has committed to improving this process. For example, the Secretary has already put in place a mechanism to create incentives for DHS officials to make information flow to Congress a top priority, and has required that employee performance reviews be linked to individual responsiveness to such requests. In a similar vein, we are considering better ways to communicate our expectations regarding GAO and OIG inquiries to our employees.

With respect to the OIG, we are only aware of one situation where the IG has complained about access issues. This instance related to the OIGY’s investigation of efforts to update the Coast Guard fleet (Deepwater). It is my understanding that this issue has been addressed and resolved. I will note that, while both the Comptroller General and the IG complained about the “tone at the top” at DHS, I have seen just the opposite. The Secretary promotes an atmosphere in which the Inspector General is called—and called early—in situations where his insight and advice can prevent problems for the Department down the road. This is evidence of a healthy relationship with our IG.

With respect to the GAO, quite frankly, we were a bit perplexed by the level of their complaint, especially given the substantial level of cooperation previously provided to GAO investigators. In general, we feel that the Department’s cooperation with the GAO has been very good.

Nevertheless, it is important to keep these activities in the proper perspective of the Department’s overwhelming efforts to cooperate with a wide variety of investigative and oversight bodies. The Department has assisted in providing information for over 250 OIG Management Reports, 1,350 OIG Investigative Reports, and 600 GAO reports and testimony. Each report requires extensive work to collect, prepare, coordinate, produce, review, and provide input. These efforts require substantial work-hours from the dedicated, hard-working employees of the Department who must also balance these efforts with their operational responsibilities to secure the homeland. In total, we have facilitated thousands of interviews and provided, quite literally, millions of pages of documents and other materials. Also, it is important to view this cooperation in light of the other extensive oversight by more than 88 congressional committees and subcommittees, and approximately 2,000 hearings and briefings provided by Department officials per year. The sheer volume of work product belies any notion that DHS has somehow slowed the process or shunned proper oversight.

Last Wednesday, I learned I would be the Department’s witness for this hearing. In preparation, I read previous testimony, IG and GAO reports, met with representatives of all the DHS components and obtained an appreciation for the large num-

bers of audits that are currently underway; I also talked to the GAO and the IG. In my opinion, we do not provide consistent guidance across the Department, some of the operational components are using procedures and practices that were from their parent organizations before they became part of DHS; the use of liaison offices in each organization is somewhat inconsistent; and there is a general feeling that information provided will be used for "Gotchas." In light of my 40 years of dealing with GAO and IG organizations, I know that we can turn this around.

Looking ahead to the future, we will further improve the Department's management processes. Indeed, we are examining ways to improve the speed with which documents and information are produced in response to appropriate requests. This includes improving communications, training, and outreach to the fine employees of the Department; possibly revamping the organizational structure or placement of the Liaison Office; and providing additional or updated guidance to Department employees on how to interact with the OIG and GAO. We should make our expectations more clear to the people on the front lines. We must also improve our headquarters-level awareness of problems that arise as a result of GAO and IG engagements, and of any access issues that arise in the operational components, so that we can take expeditious action to resolve these matters quickly and satisfactorily.

As the Under Secretary for Management, I want to assure the Committee that we take this issue very seriously and are examining the best ways to improve our processes. I have worked with the GAO and IGs for nearly 40 years, and I am hopeful that I can bring my experience to bear here and affect the changes we all think are necessary. We need to do a better job of implementing the Department's stated principle of cooperation, and we will work with all DHS components to improve our implementation and execution. DHS welcomes input on how to better pursue its mission, and we look forward to working with the Subcommittee and other congressional bodies, as well as the Inspector General and Comptroller General, to better protect the Nation's homeland. Thank you. I would be happy to address whatever questions the Members may have.

Mr. CARNEY. I thank the witnesses for their testimony.

I will remind each member that he will have five minutes to question the panel. I now recognize myself for questions for five minutes.

Undersecretary Schneider, your testimony struck me oddly, both as hopeful, but somewhat ambivalent, I think, might be the right word. On the one hand we are saying that we are making good progress, that we are doing well, that we have a substantial level of cooperation, it has been very good. On the other hand, we have some serious problems. Which is it?

Mr. SCHNEIDER. Mr. Chairman, let me give you some examples. In my discussion with the inspector general on Monday, I said, "Can you give me some concrete examples of where we in the department do things well?" And he said, "Sure." And so he cited, for example, what I would phrase, just giving back what he told me, of three turnaround efforts, say, in the past six months.

One was the Coast Guard. His example was after the issue with the national security cutter, which was the big issue that surfaced, he met with the commandant of the Coast Guard, the deputy secretary, and I forgot who else, and basically established an agreement in principle that basically got full and open cooperation. Since that period of time, once the leadership of the Coast Guard, the commandant, got involved, he has not had any problems.

The other two examples he cited were my own chief financial officer organization. They are, for obvious reasons, an area that frequently get looked at as good management oversight, by the IG. What he told me was once the new Senate-confirmed CFO came on board, Mr. Norquist, after a brief discussion with him about the problems that the IG had had in the past, he has not had any problems. Those problems have disappeared.

He also talked to me about what he considered to be one of the most serious organizations that he had problems dealing with, which was the headquarters Science and Technology Directorate, and that upon the arrival of, and I think it was back in the summer, the new undersecretary, Secretary Cohen, based on the discussions that the IG had with him about the difficulties, that has been a complete turnaround.

So he and I had a discussion, and I guess it just reaffirmed in my own mind what I felt all along is that it is the responsibility of leadership to reflect the change. When the leadership of those organizations realized they had a problem, they took action. I can tell you in my own personal experience since I have been here, I mentioned in my testimony that the secretary takes very seriously responsiveness to Congress.

I can tell you that since I am one of the senior members of his staff, the controls that he has put in place and the management oversight that he personally and the deputy secretary personally exercise in terms of timeliness of reports, or questions for the record, it is managed at a very high level because the secretary and the department's credibility is key to it. In just my personal assessment since I sign out the large percentage of the reports that are due to Congress, I can tell you we track every one. We have a weekly sit-down with the deputy secretary and all the senior managers and go through it.

So my view is, the leadership gets involved at the right level, and if necessary at the highest level, it gets resolved. The other issue that he gave me an example was he cited one of the other operational components. I think it was Customs and Border Protection. He said, "I will tell you, I was having a problem, it got to my level, I picked up the phone, I called the head of Customs and Border Protection, Commissioner Basham, and he said 'no problem', and it was solved in five minutes."

So that is why I am optimistic that leadership has to get involved. If I could give you one other example, because I think it is a very telling example, of why I am optimistic and why I also recognize we have difficulties. When I had the opportunity to review Mr. Rabkin's testimony yesterday morning, obviously the first thing I did was scan it. I noticed that he cited two examples in there, one pertaining to Immigration and Customs Enforcement, ICE, and the other to an exercise, I think it was called Forward Challenge.

So after reading the ICE example, I had no knowledge of it. I picked up the phone and I called the head of ICE, Assistant Secretary Myers, and I said, "I am going to send you this report. I would like you to have somebody call me back with some information in the morning so I at least have some awareness of it."

Well, 60 minutes later I got a series of e-mails from her, and then a personal phone call. It went like this, and I will just kind of summarize it. She sent an e-mail to all of her subordinates, her key subordinates nationwide and basically said, "I want you to read this document. It is very disappointing to me, and I want you to know that I will not tolerate this type of performance by my organization." And then she gave some additional guidance, et cetera.

She called me shortly after that and told me that she had picked up the phone and called Mr. Rabkin, and said that she was totally unaware of this thing, and that is not the type of performance that she expects from her organization.

So this example—and I am happy, quite frankly, in one way that it was in the report—pointed out a couple of things. Number one, why did it get to that level that she had to find out about it in a GAO report? And since that management directive that has been in place says that I am responsible within the department for the management of this system, why did I find out about it by having to read the testimony?

So we within the department, and that includes me, my liaison office, the operating components liaison office, we do not have the right procedures in place by which information gets surfaced so we can react quickly and get these issues nailed down.

I hope I tried to explain and answer your question.

Mr. CARNEY. I appreciate that.

I will now recognize the ranking member of the subcommittee, the gentleman from Alabama, Mr. Rogers, for questions.

Mr. ROGERS. Thank you, Mr. Chairman.

Mr. Schneider, I want to direct this question to you. As you may or may not be aware, I have been pursuing border patrol training information for a couple of years now, specifically trying to make sure that we are on track to meet the president's goals of having 18,500 border patrol agents trained and on the ground in 2009. But also trying to determine why it costs \$187,000 per border patrol agent to train them and put them on the ground.

Having said that, in order to meet the goal of getting from where we started, and that is 12,500 agents to date, 18,500 agents in three years, we are going to have to train approximately 8,800 per year when you factor in attrition from retirements. So what I have been trying to get CBP to do is to give me some basic information about how they are going to accomplish this goal.

In January, I requested from Customs and Border Protection an update of the statistics CBP previously provided on the number of border patrol trainees and where they were in the pipeline, what I refer to as the pipeline between the time we advertise for the applicants until we vet them, and then put them through the educational program, when there is an actual agent on the ground.

In March, I asked again for these statistics in a meeting with the CBP commissioner. And again this month I asked the DHS acting general counsel to help secure these basic statistics. What I would ask you, Mr. Schneider, is will you provide these statistics for the record? Specifically, please provide the number of border patrol trainees who, one, have entered the pipeline; two, discontinued training; three, started training; four, dropped out due to attrition; or five, graduated. [See Appendix II.]

My concern is this: I have believed from the beginning that we don't have the current infrastructure in place at Artesia, New Mexico, if that is going to be the sole location for training, to move this massive number of agents through in three years. I have been out there and visited and I have talked with the folks in charge. It is a great school. I am not disparaging the school. But based on their

historical performance, I don't see how they can recruit and process enough to do that.

I have asked for information that will tell me I am wrong. I can't get any information. This is just one of many examples that the members of this committee have had with different components within DHS. One of my concerns is the reason they are not providing the information is because they are not meeting the goals. They don't want us to see the information they have because it will demonstrate that in fact the administration is not going to be able to hit those targets.

That is information we need to know because if we are not going to be able to hit that 2009 target, we have to do something different. That is why I think they are afraid that we are going to propose that we do something different. So that is just my pet problem. If you could help with it, I would appreciate it.

Mr. SCHNEIDER. Congressman, I will certainly go look at that. Most of these types of formal reports or responses to Congress, I am the guy that is the final signature on most of these. I can tell you, I sign out reports where the numbers are not very good. OK?

I don't remember that one, but I do sign a tremendous amount of reports. I really read them all, and I pick out the areas that I think where in fact we have not met expectations. On this specific case, I will go back and find out why we haven't been able to answer your question.

Mr. ROGERS. Thank you, sir.

Mr. CARNEY. Does the gentleman yield?

Mr. ROGERS. Yes.

Mr. CARNEY. Okay. I now recognize the chairman of the full committee, Mr. Thompson, for five minutes.

Mr. THOMPSON. Thank you very much, Mr. Chairman.

Mr. Rabkin, Undersecretary Schneider talked about the need for senior leadership to become involved in this access to information and cooperation issue. Do you have an opinion as to whether the problems you encountered were just at the component level? Or did they start at the top?

Mr. RABKIN. It is my sense, Mr. Chairman, that the problems start at the top. There is a tone that is set in the department, and it reflects its way through how the components are expected to implement the directives—what the words really mean; what kind of action is recognized and rewarded; what kind of action is sanctioned, et cetera.

I am concerned that the flow of information to the top also is not what it should be. I am pleased to hear that there are steps being proposed and hopefully taken to improve that. There are at least two ways that top management can be aware of these kinds of problems. Number one is that the liaisons and the component heads will surface them themselves. The second is that GAO will bring them to a head.

From our perspective, that is part of our protocol. We will do that, but it is more towards the end of our process than at the beginning. We don't want to come running to the component head with every question that we have and every time we think documents are not flowing or information is not flowing as quickly as possible. We try to work with the program officials. We try to work

through the liaisons. We work actively with DHS and component counsel to try to resolve this. We work it up the management structure slowly to try to resolve this at as low a level as possible.

When the circumstances get to the point where we are not making progress and we feel we have to get to our clients and let them know that things are being delayed, we will bring that to higher levels within the component's management, eventually to Mr. Schneider's office and if need be to the deputy secretary and the secretary, as we have done in the past.

Mr. THOMPSON. Thank you very much.

Undersecretary Schneider, are you aware of a letter that the inspector general provided the deputy secretary with detailing the role of the inspector general and a series of frequently asked questions?

Mr. SCHNEIDER. Yes, I am. It is a single-page letter that was a proposal by Inspector General Skinner, a proposed letter that he at the time, I think it was July, 2006, recommended that the secretary sign out to all employees. It laid out the very simple statement about what he expected them to provide, and then it was an attachment that had a series of what he considered to be frequently asked questions and answers.

Mr. THOMPSON. Your testimony to the committee is that you were aware that in this letter the inspector general asked that they be distributed.

Mr. SCHNEIDER. Yes. From what I understand, and when I became aware of this letter a couple of days ago, my question was: Who actually saw it? I don't know for a fact that the deputy secretary actually saw it. I know for a fact that the general counsel saw it. Whether it ever got to the deputy secretary or secretary with or without the general counsel's comments, I don't know. I didn't ask him, frankly.

Mr. THOMPSON. Can you tell us that as of this hearing date whether or not that letter has ever been distributed as requested by the inspector general?

Mr. SCHNEIDER. It has not been distributed.

Mr. THOMPSON. Do you know why it was not distributed?

Mr. SCHNEIDER. Yes. I have a pretty good reason understanding why. I think there were issues with blanket implementation across the department on several of the items that were listed in the covering memo.

Mr. THOMPSON. Fine. Do you know whether or not the inspector general's office was every told that there were some issues with the memo?

Mr. SCHNEIDER. When I talked to him, the inspector general, on Monday, I talked about this memo within the context of, "Hey, Rick, is this really needed?" Because I had seen previous documentation in some of his reports—and I forget which report it is—where he indicated that additional protocols were not necessary. That was actually the precursor to our discussion about execution and leadership.

Mr. THOMPSON. I understand. I guess what I am trying to get to is if someone sends you a letter in July and here it is April of the following year, and you have not even said to the person who sent the letter "we have a problem with it." I think that goes to the fun-

damental issue of why we are holding this hearing is if we can't answer a letter, then how in the world do we expect the agencies who are charged with oversight to get the information that Congress is requesting?

Mr. SCHNEIDER. Very specifically, I do not know. Well, first of all, I am not aware of any formal response to this draft letter. I am also not aware of whether it was handed to the general counsel or if it was formally transmitted, or whether or not they had any discussions about what the potential concerns with what was in here. So yes, sir, should he have perhaps given him a formal, "Look, I have issues with A, B, and C. Let's talk about it"? Probably.

Mr. THOMPSON. Will you provide the committee with the answer to all three of those questions you just raised?

Mr. SCHNEIDER. Yes, sir.

Mr. THOMPSON. As to whether or not it was ever responded to.

Mr. SCHNEIDER. Yes, sir.

Mr. THOMPSON. Whether or not, from the standpoint of implementation, whether it was distributed.

Mr. SCHNEIDER. I will send you this formally in writing, but I know it was not distributed.

Mr. THOMPSON. Well, then we need to know why it was not. Who made the decision not to distribute it?

Mr. SCHNEIDER. OK.

Mr. THOMPSON. The inspector general's position is a significant position for this department. I would think that if they ask the department to do something and the department ignores it, that is significant, and the process of ignoring it is a real concern.

Mr. Chairman, let me just thank you for conducting the hearing, but I hope you can see that it just continues to raise other questions about information.

And the last thing is, if our own people can't have access to information, I wonder what John Q. Public would have if they made a request. I guess at some point we might need to look at it, but I think we are charged, just like you, with a responsibility for providing information in a reasonable period of time.

I yield back. Thank you.

Mr. CARNEY. Thank you, Mr. Chairman.

The chair now recognizes the gentleman from Colorado, Mr. Perlmutter, for five minutes.

Mr. PERLMUTTER. Thanks, Mr. Chair.

Gentlemen, thank you for being here today.

I would like to start on the fact that we don't have Inspector General Skinner here to testify today. I understand he believes that the department is making a lot of improvements in terms of communication, et cetera.

Can either of you comment on that? What improvements do you think have been made in the last three months since this committee, and I know Congressman Rogers has been focusing on this subject for a long time.

What improvements really have been made in the last two or three months that either one of you have seen?

Mr. SCHNEIDER. I think the three examples that Inspector General Skinner cited to me about the Coast Guard, the chief financial officer, and the Science and Technology Directorate of the depart-

ment, that he has seen a complete turnaround, and that they are examples of how the organization ought to function and respond to IG requests, where previously they were poor performers in providing the information.

So we didn't change any directives. It was a question of the head guy saying, "this is important and I expect you to work with these people." So I see that, because I was looking for is there any bright sunlight or some examples that you can give me, and those are three. He said, "I will give you three right off the top of my head, because it is a complete turnaround."

So that is recent. It reflects, frankly, the change in individuals once they came on board. In the case of the Coast Guard, once the situation was made aware to him in detail, and he is a detail-type of guy, to basically change the response of the organization. So I think those are pretty concrete examples.

Mr. PERLMUTTER. The inspector general has seen those. What about you? Where have you seen improvement?

Mr. SCHNEIDER. I work very closely with the Coast Guard, and the main reason is because of the roughly \$1 billion a year we spend on Deepwater. I think the lion's share of the Coast Guard IG investigations and audits have been on Deepwater. I spend a lot of time personally with the flag leadership of the Coast Guard, reviewing the details of that program.

Some of the questions I ask is, "Is information flow going OK with the IG? With the GAO, if they are involved? Because I want to understand. And from what I gather, and it was corroborated by the inspector general, in that particular case it works very well. When I talk to the CFO who works for me, the chief financial officer, one of the things I do is I inquire about how well we are doing in answering the IG's responsiveness. I basically say, "give me some examples, show me."

I also take a look at how many audits or how many inspections do we have going on? What is the rack up of the numbers? Because there is a tremendous volume of them. I am not satisfied, quite frankly, with the level of detail, the information that I get at headquarters to know whether or not we have an issue brewing.

So one of the things that I am trying to figure out how to do is if the IG or the GAO is trying to interview people somewhere in the continental United States or somewhere overseas, and they are having great difficulty with access and things like that, I want to try and figure out how I can get my information flow from, I will call it that agent on the frontline back up to the right authorities to fix it.

Mr. PERLMUTTER. Let me shift you over to the immigration side of this department. How is that going?

Because I have been hearing through the grapevine, similar to some of the things that Mr. Rogers was talking about, that the flow of information about personnel issues, as well as the focus of the department, the missions of the department, there are all sorts of issues about information coming up to the top, up to all of you. We have had some problems with that. Am I completely off-base? Do you know what I am talking about?

Mr. SCHNEIDER. No, sir, I don't. I am afraid I don't know. I know in the case of, well, let's talk about Customs and Border Protection.



There are two examples, OK? One example is what I would consider to be what the IG told me in terms of responses having difficulty. It was resolved in five minutes—OK?—with the head of Customs and Border Protection.

I know in the case of, I think it is Mr. Rabkin's testimony, where the CBP went through extraordinary effort to basically provide the information that was required. I also know that right within that same department, I think he contrasts, if you will, difficulties getting information from other elements of that particular program.

When I talked to Ms. Myers about the ICE example in here, she also told me about another example (inaudible) required, and I also know about another example that I think she discussed with Mr. Rabkin I think on Atlas, where in fact I believe our interpretation of how well that went, was it went very well.

So here I have two operational components—OK?—the same leadership. On the one hand we have efforts that work very smoothly, information flows very quickly; and on others, we have problems. OK? And so relative to immigration and protection of the borders, I have considered that ICE and CBP are two of the three main operational components.

So we have examples in both of those where it works fairly well, and we have examples in both of them where we have problems.

Mr. PERLMUTTER. OK. Thank you.

Mr. CARNEY. Thank you, Mr. Perlmutter.

I will start the second round here. Mr. Rabkin, in his prepared testimony, Undersecretary Schneider said that the department was "perplexed" by the level of the GAO's complaint. Did GAO raise concerns with the department prior to Comptroller General Walker's February testimony? If so, with whom?

Mr. RABKIN. We raised these issues day-in and day-out at the lower levels with our liaisons. The liaisons, it is part of their responsibility in fact to try to resolve these problems. Because of the procedures that are in place where we have to go through the liaisons to deal with program officials, we have to rely on them.

And so then it becomes a question of what is a reasonable amount of time for us to wait, while they try to resolve the issues as to whether the issue we are requesting, (A) exists; and (B), will be provided; (C), when it will be provided; and (D), in what shape it will be provided—that is, whether any contents will be redacted, et cetera.

And because our people work constantly with them, we like to give them enough time to try to do their job. Days turn into weeks and weeks turn into months. And then we have to make judgments as to: Is it really going to come next week, as they have said? Or is it time to kick it upstairs? We make those calls on a facts-and-circumstances basis in each case.

And there have been cases where we have kicked it upstairs, so to speak, and we have had meetings: we have had phone calls about letters that are being written to formally request this information coming from our managers to the undersecretary; there have been letters that have gone even higher up. So we have been doing this, but we much prefer doing it at the lower levels.

Mr. CARNEY. Thank you. I am having a tough time getting my mind around a lot of this. Is the slow response bureaucratic intran-

sigence? Is it political embarrassment? Is it just stubbornness? I hate to have you speculate on this, but from your professional background, what do you attribute some of this to?

Mr. RABKIN. I think at first there was some concern about what the process should be. As the department was formed, a lot of different agencies came together with different procedures, et cetera. I think there was a lot of GAO work going on at the time, and in my opinion a lot of that was because congressional committees were not getting direct responses—as you have already mentioned—and you (Congress) were asking us then to go in with our folks and try to get information out of the agency using our methods.

So we were very busy doing that. They were getting inundated. They staffed up their liaison functions, which was helpful. Then Hurricane Katrina hit. I think that was a watershed event in that not only were we involved in looking at the performance of the department, but the White House was looking it. The IG was looking at it. The House had a special committee. The Senate Governmental Affairs Committee had a special investigation on it.

And they were being inundated with requests for a lot of the times the same documents. In an attempt to control the dissemination of those documents, they created a process where everything had to come into a single place before it all went out. That, of course, was a bottleneck. At one point, our formal request got lost and we had to wait for them to find it, and we had to get them another request, et cetera. So it was not the best of times.

Since then, I think that the tone, up until recently, has been that this is the process the department wanted GAO to go through. The department needed to be very sure before anything was turned over to GAO that they felt that GAO ought to have it. And it was, quite frankly, a little confrontational.

In response to the question that Congressman Perlmutter asked recently, we have also noted some changes recently. I have asked my staff to keep me informed of their access issues and there are some anecdotes where documents are coming in a lot quicker than they did before. But, I am concerned for two reasons. Number one, it is just anecdotes. And number two is that to the extent that there is potential turnover of the people in DHS who are now in managerial and executive positions. DHS management are asking them to do it today, but these people may change tomorrow. The new attitude may come in. So I would like to see something a little more institutionalized. We could talk about that if you would like.

The other issue is where there have been opportunities, or where there have been cases where there has been great cooperation. Both the cases that Undersecretary Schneider cited of SBINet and the Atlas Program are cases where the appropriators withheld the release of appropriated funds until the department prepared an expenditure plan or other documents, had it reviewed by GAO, and then sent it to the Congress to convince the Congress that they knew what they were going to do with the money.

So our approval, our review and comments to the Congress on those plans was essential in the release of those monies. And so there was a terrific incentive for the department to cooperate,

which they did. I am not suggesting that every program and every appropriation be tied to this, but when it is, it seems to work.

Mr. CARNEY. Yes, when there is money involved, things move. We understand that.

I now recognize Mr. Rogers for a second round of questions.

Mr. ROGERS. Thank you, Mr. Chairman.

Mr. Rabkin, I would like to talk about some things you would like to see done differently. You are probably aware that in the 2008 DHS authorization bill, we included a provision in there that would require all the legislative affairs offices of the agencies to have direct reporting responsibility to the assistant secretary for legislative affairs at DHS. Do you feel like that would help this flow of information that we are looking for?

Mr. RABKIN. I think most of the liaisons are not in the legislative affairs offices, so I think there is something separate that would have to take place. Whether it is mandated by the Congress or done administratively by the department, I think tying the liaisons together and elevating their status is a good first step. But I think there are more specific things, such as. . .

Mr. ROGERS. Tell me about them.

Mr. RABKIN. —in the directive that DHS has where they tell their people, “this is how you interact with GAO,” they have a checklist of information. They say that if any of this kind of information is going to go to GAO, we need to check on it first before it goes. That checklist includes such things as information that has been marked as security-sensitive information, for example.

We handle that stuff all the time. We handle it as well as the department does. It should really be no issue on that. I think it is a matter of can they fine-tune of identifying those cases where somebody else outside of the program office needs to pre-approve the release of the information. I would like to see a change where the norm is that the information will be provided to GAO. And that the program officials will notify the liaison and they can notify their counsel at the time it is provided to GAO. And if there is any additional sensitivities or handling instructions that need to go with it, there is plenty of time for them to have that conversation with us.

I would also like to see us have direct access to the program officials. These are people who are responsible for carrying out the very important programs of the department. They are very capable people. They ought to be able to make judgments as to what information that they have is so sensitive that it shouldn't be provided to the GAO, or provided only under certain circumstances. Also, we ought to be able to have conversations with them. We can follow-up on information they provide us to get clarifying questions answered, without having to go through liaisons and having everything officially scheduled. It is much more efficient to do it directly.

Mr. ROGERS. Right. You stated in your prepared statement that they have mechanisms that the Department of Homeland Security employs in cooperating with investigations by the GAO that are far more impeding than those encountered in other agencies. Are those the things that you are talking about?

Mr. RABKIN. Yes, sir. The involvement of the liaisons and the reviews. I think that what Mr. Schneider talked about regarding try-

ing to do these reviews in a more timely way, would really help, because a lot of times what happens is: All right, we can understand and wait for a couple of days while somebody in DHS checks out a document, to see if this is the right kind of information that would in fact answer the questions that GAO is asking. We ask for information, not necessarily for documents. If they have a document that would answer the questions, that is fine. So they may have to do a little research to address our specific question.

But when days turn into weeks, and we talk to the liaisons and ask, "when can we expect to get this?" And the DHS liaison responds "Well, we don't know; the lawyers are looking it, or it has to go up to this person." They just sort of lose track of where it is. That is what is very frustrating.

Mr. ROGERS. Do you find this same sort of structure or mechanism in other agencies?

Mr. RABKIN. Most other agencies, even agencies like the Defense Department that deal with very sensitive information all the time have policies, procedures and practices in place that make it more efficient for the information to be shared with GAO. This is by far at this point in time—for the department and all the teams in GAO that work with the department—what we have found this to be our biggest concern. It doesn't mean that the practice of providing documents is perfect elsewhere, but it is an exception elsewhere. Here, it tends to be the rule.

Mr. ROGERS. Thank you.

Thank you, Mr. Chairman. I yield back.

Mr. CARNEY. Thank you, Mr. Rogers.

Mr. Perlmutter for five minutes?

Mr. PERLMUTTER. Thank you.

A couple of questions. Mr. Rabkin, you brought up the subject of this unclassified-but-sensitive information. We had a hearing yesterday in the Intelligence Committee about reclassifying all this stuff, because I think there has been a bit of a shell game going on, I don't whether intentionally or not or just because folks don't know exactly what their documents are and how sensitive they are, and whether you should be gaining access to them, and every lawyer has to look at everything before your organization gets to do its job.

So I am trying to remember, the gentleman, the undersecretary, he is an ambassador. I don't remember his last name.

Mr. RABKIN. McNamara?

Mr. PERLMUTTER. McNamara, yesterday. I think that it would be good if the GAO or the inspector general also worked with the ambassador in kind of redefining all of those classifications, because I think part of the problem, I would just say as a lawyer I want to represent my client. I want to make sure that the client doesn't release documents that are super-secret and cause all sorts of other kind of havoc.

On the other hand, we need to have the oversight and sort of this watchdog role, and we can't play this kind of shell game. Because Mr. Undersecretary, I am concerned that the communications problems go far beyond the Coast Guard issues. I think just in the various hearings we have had, we have heard about it with respect to ICE, with the Border Patrol. We have heard about it with FEMA.

The trouble is, you have 22 agencies now all under one roof. Somebody says, "Well, that is sensitive information; we are not going to give it up." Another, you know, "I have to talk to my boss on that one; we are not going to share it with you." There has just been too much of that across the board.

I am happy to hear there has been improvement. I think the fact that we focused on it so directly right out of the box, there have been some changes. But having said that, starting with you, Mr. Rabkin, just sort of react to my free verse here.

Mr. RABKIN. Mr. Perlmutter, last year we issued a report on sensitive-but-unclassified information, mainly in DHS. We commented on the proliferation of different types of sensitive-but-unclassified information, and the lack of rigor in how it was marked, how it was handled, how people were trained in handling it, who within the Department were making these decisions, who were reviewing them, et cetera.

We made a series of recommendations to try to tighten that up. Those recommendations, at first the program manager, who is now Mr. McNamara, were unreceptive to our report. I think they have changed their mind about that. I think there are attempts being made now to get a handle on that. I think either his office or at OMB or somebody at that level has got to reach across government and try to get a handle on this. Because when we first went through, we found—I forget what the number is—around 100 categories of sensitive but unclassified information. And when they looked, they found even more.

So this is a significant problem. This is a balancing act that has to take place. There are certainly bona fide reasons to protect information. On the other hand, every time you do that, you are limiting the public access.

We have that information. That should not be a reason for us not to have access to it. We can look at it. We can analyze it. We can report it to you. We just put a different kind of report cover on it, and that special report cover limits the distribution of information.

But what we try to do at the end of each of those engagements where we have sensitive-but-unclassified or even classified information, we try to find a way to get a report out to the public that will let them know what we looked at, whether we found problems without getting very specific, and whether we made recommendations, so that the public, as well as the Congress and GAO, can hold the department's accountable for making change.

Mr. PERLMUTTER. Mr. Schneider, you seem to want to say something.

Mr. SCHNEIDER. Well, first of all, I agree that in the attachment that we have in that management directive that Mr. Rabkin talked about, it is far too broad. That is one of the things that I really specifically had in mind in my testimony about can we narrow this thing down so that the exceptions are rare.

I agree with him about security of sensitive information. In my nearly 40 years, my experience is we have given the highest level of classified information to the GAO and it has never been a problem. Sometimes, in fact, when we accidentally had something that was incorrectly marked, we said, "hey, you need to fix it," and they have fixed it.

So I guess I agree with him that that list is too broad. We have to narrow it down. It ought to be a rare exception, as opposed to the practice. The classification issue in terms of whether it is sensitive security information, secret information or the like, proprietary, et cetera, if it is properly marked and everybody understands it according to the classification standard, that should not be an issue.

Mr. PERLMUTTER. OK. My time is up. I had one more question.

Mr. CARNEY. The chair will yield for three minutes.

Mr. PERLMUTTER. Just one minute. Thank you, Mr. Chair.

In this draft that Chairman Thompson was talking about, and I know it hasn't been circulated. I am just curious if there is any kind of repercussions if this doesn't happen.

It says, "In particular, I expect DHS employees to cooperate with OIG by promptly providing all requested materials and any other information relevant to a request; providing requested information materials directly to OIG, not routed through an intermediary; honoring OIG requests for private interviews and direct contact, recognizing that any employee may speak directly and confidentially with OIG; and respecting OIG independence by refraining from any activity that might chill an employee or contractor's communication."

I know that wasn't widespread, but those things seem ABC-like to me. Those are basic parts of the communication path in government. So those things just are basic.

Is there any kind of repercussion in the event a department or an individual tries to stonewall or doesn't permit these things to happen? Is there some kind of a black mark that that person gets?

Mr. SCHNEIDER. I am not aware today of any black mark. There are a couple of points here, and this is one of these situations where 99 percent of the time there is probably not an issue with what you call, Congressman, the ABCs. It is the 1 percent that we seem to spend the tremendous amount of time on to make sure that we are not crossing the line on something.

Some of the issues come up relative to third-party classification of the document. It is not our document. We didn't classify it. We don't even know what the right classification is. We do a lot of work, as you are aware, with lots of the other departments. And so those are some of the issues that I would say are classified in the 1 percent.

We believe that there are other issues here. For example, the secretary in his February 7th or 8th testimony in front of Chairman Price in the Appropriations Committee specifically talked about this issue relative to deciding that he as a prosecutor would have liked to be able to talk to witnesses without counsel present, but the fact of the matter is sometimes in the case here that is not going to be the case.

So as a general rule, we wouldn't expect to have somebody. If an employee decides that he wants to have a representative with him when he talked to the IG, my understanding is the IG would ultimately agree to that.

There is one issue here on the bottom of this page that is particularly significant. I spent a little bit of time doing some research on this one because of my background being a program manager,

and executing major programs has to do with direct access by the IG to contractor employees.

Mr. PERLMUTTER. OK.

Mr. SCHNEIDER. That is an issue. I am an engineer. I am not a lawyer or contracts type, but basically I have looked at the FAR-DFAR clauses and HSAR clauses, and what is required in contracts is for information, for data. OK? Hard copy data information. We do not have and we would suspect that in many instances, especially where we have contractors that have strong unions, direct access to people without a management supervisor or union representatives present would probably be a problem.

So those are just some of the issues that at first blush would cause some difficulty. It is one of the reasons why, notwithstanding the fact we should have taken prompt action, as Chairman Thomson said, but it is one of the reasons why the ABCs are on the surface, yes. Now, can we do things? Yes. We can shorten that list of exceptions and basically give the information and on an exception basis use good common sense and judgment as to whether or not they need to talk to somebody.

Mr. PERLMUTTER. Thank you, sir.

Mr. CARNEY. Thank you, Mr. Perlmutter.

Mr. Rabkin, prior to the formation of the department, GAO had dealings with many of the legacy agencies. Can you tell whether GAO's relationship with those agencies has changed since DHS was formed? Have they gotten more cooperative? Less cooperative? Stayed the same? Can you characterize that for me, please?

Mr. RABKIN. In general, Mr. Chairman, they have gotten less cooperative. While relationships prior to the formation of DHS with these agencies were not always perfect, we had less problems getting direct access to agency officials. We had fewer problems with the timely provision of requested documents. Whether it was the legacy INS, the Customs Service, FEMA, Coast Guard, et cetera, I think, as a rule, access at the working level was much better.

Mr. CARNEY. Can you attribute that to something?

Mr. RABKIN. As I mentioned earlier, I think it was first of all, the formation of the department, and everybody now was part of a new department and they were looking around to see what are the rules: "how should we behave?" And that took a while for those questions to be answered.

When they were answered, they then became a matter of interpretation, and that took a little while until that was worked out. And then in 2005, when Hurricanes Katrina and Rita and Wilma hit the Gulf Coast, there was a lot of worry and concern about how the department, specifically how a lot of the departments, but specifically about DHS and FEMA reacted.

As I mentioned earlier, there were a lot of investigations and a lot of requests for access to data, which resulted in DHS centralizing control. And eventually a pattern was established from that that we are still with, and hopefully, maybe, we have turned the corner on it now. But we are still trying to deal with it.

Mr. CARNEY. Thank you.

Mr. Rabkin, in your testimony you have basically two recommendations for improving GAO's interaction with DHS. You want to be able first, if I am reading this correctly, to be able to

deal directly with program officials at the initial entrance conference. Is that correct?

Mr. RABKIN. Correct, after the initial entrance conference.

Mr. CARNEY. After, and then where the department counsel believes it necessary to review certain documents, you want this only to happen on a very rare, exceptional basis. Is that correct?

Mr. RABKIN. That is correct.

Mr. CARNEY. OK.

Undersecretary Schneider, can you agree to both these requests today?

Mr. SCHNEIDER. No, sir, and I have spent a lot of time looking at those two recommendations. I agree that for the majority of the instances that GAO ought to be able to deal with the program people after they have had the initial entrance conference. I believe in the majority of cases that should not be an issue.

I also agree that if there are concerns, they can involve DHS liaison organizations either at the headquarters or in the operational components. I think that ought to be the general operating rule. And we ought to be able to figure out which ones they are. Certain types of audits or reviews require a little closer involvement or coordinators. This ends up being the issue which people refer to as "pre-decisional" or "pre-deliberate," where it is basically analysis as opposed to facts.

Some of the cases or efforts where there have been problems have revolved around those types, as opposed to a straight effort looking at a communications system or something of the like.

I also think that in general the second recommendation that documents ought to be provided directly kind of follows with the first. For the most part, that should be the normal practice. There are going to be some exceptions. So that is why my initial response to your question—would I agree to do that today?—not across the board.

And that is why I think it ends up being the judgment of the people to know, based on the nature of the effort being looked at, whether or not it ought to be, hey, straight to the program people after the initial entrance meeting, or whether or not it is going to require special considerations and special reviews.

And if it does, it ought to be able to be done on an expeditious basis. That is not an excuse, in my mind, for the lack of a timely response.

Mr. CARNEY. So the judgment will be made by the same people that have delayed the process so far?

Mr. SCHNEIDER. No. That is where our system is not working. We have to figure out a better way so that these issues get visibility fast. I believe that at the operational component level, if they can't resolve it, I can resolve it. If an issue has surfaced, OK—and this is where this liaison office in an operational component is a two-edged sword, frankly.

I indicated earlier that last week I met with senior folks of each of the operational components. What they told me was this: whether it is the IG or the GAO, if they go off and they start dealing with program people directly, if you will, that is fine. And maybe that will work fine.



But then what happens if those people out there—and I am talking about geographically dispersed, as opposed to within eyeball sight within D.C.—for whatever reason, don't provide the information. How does leadership find out about it? Well, leadership would normally rely on the liaison to get the feedback. Well, if you don't have the right mechanisms in place by which program people dealing directly with the IG or the GAO are providing that information, where discrepancies or issues or conflicts are coming up, then how is leadership supposed to respond?

So I think there is a clear middle of the road here where for most cases they can deal directly and should be able to deal directly with the program people to speed things up, and that somehow or other we have these feedback mechanisms in place so that whether it is the operational component liaison or whether it is my liaison at headquarters, we have visibility to these areas where we are having difficulty providing the information.

And so we can act on it and jump on it, whether I keep a punch list or whether the head of ICE or CBP keeps a punch list, and we start working them off, and make sure they get done quickly. That is one of the management schemes. So that is why unfortunately we have a tendency to focus on the 1 percent, OK? The exceptions, as opposed to establishing the general operating principles that by and large things ought to move quickly. There doesn't need to be special handling.

Mr. CARNEY. Right. I understand. To say it is 1 percent I think really underestimates the problem.

Mr. Rogers, any more questions? No further questions?

Mr. Perlmutter?

Mr. PERLMUTTER. Just a follow-up. I think it is incumbent on the investigative arm, whether it is the inspector general's office or the GAO—and I think what I did hear you agree to is that the buck is stopping with you. And so if there is a problem, they are not getting a response—somebody delayed; somebody stonewalled; somebody has just forgotten about it—it can come up through your channels from ICE or CBP or FEMA or whatever, but it also can come up through the investigators, the auditor's channel and come over to you and say, "What is going on here? Why haven't we gotten a response?"

Mr. SCHNEIDER. Yes, sir. That management directive clearly states that I am in charge of this thing. I think I said it earlier. I am not satisfied, if you will, that I have been doing a good enough job of getting visibility into the detailed issue so I can jump on them.

Mr. CARNEY. Mr. Rabkin?

Mr. RABKIN. In response to Mr. Perlmutter's comment and Mr. Perlmutter's question, and the earlier discussion of GAO having access to program officials out in the field. If the field program officials are reluctant or refuse to provide us information, I think that fact will get up the chain quickly. Our folks will come back, call their managers, and let us know about it. We will call the liaisons and we will work it up the chain of chain command.

I think there is another concern here, perhaps, and that is that DHS program officials will be too forthcoming with information. That is fine with us, but maybe the department needs to know just

what did you give GAO or the IG, and how much did you give them. And maybe there is some reasonable concern there. Was it the latest policies? Was it the latest information? Did you give them enough context so that the auditors will understand what the information means?

I think that DHS and the program officials in the field can have their own conversations about that and ensure that we get full information. So I think they can work that separately. I really don't think it is an issue. I understand that there may be isolated cases where we shouldn't be talking directly to a program official and they may want to have somebody there. We have done this in the past. It has always worked out fine, whether it is here in Washington or anywhere in the field, including overseas. So we are willing to accept that.

Mr. CARNEY. Mr. Rogers, any further questions?

Mr. Perlmutter?

I thank the witnesses for their valuable testimony and the members for their questions. Members of the subcommittee may have additional questions for the witnesses. We ask that you respond expeditiously in writing to those questions.

Hearing no further business, the subcommittee stands adjourned.  
[Whereupon, at 11:18 a.m., the subcommittee was adjourned.]

## Appendix I: Key GAO Audit and Access Authorities

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### GAO's Audit and Evaluation Authority:

GAO has broad statutory authority under title 31 of the United States

Code to audit and evaluate agency financial transactions, programs, and activities. Under 31 U.S.C. § 712, GAO has authority to investigate all matters related to the receipt, disbursement, and use of public money.

Section 717 of title 31, U.S.C., authorizes GAO to evaluate the results of programs and activities of federal agencies, on GAO's own initiative or when requested by either house of Congress or a committee of jurisdiction. Section 3523(a) of title 31 authorizes GAO to audit the financial transactions of each agency, except as specifically provided by law.

### GAO's Access-to-Records Authority:

To carry out these audit and evaluation authorities, GAO has a broad statutory right of access to agency records. Under 31 U.S.C. § 716(a), federal agencies are required to provide GAO with information about their duties, powers, activities, organization, and financial transactions. When an agency does not make a record available to GAO within a reasonable period of time, GAO may issue a written request to the agency head specifying the record needed and the authority for accessing the record. Should the agency fail to release the record to GAO, GAO has the authority to enforce its requests for records by filing a civil action to compel production of records in federal district court.

A limitation in section 716, while not restricting GAO's basic statutory right of access, acts to limit GAO's ability to compel production of particular records through a court action. For example, GAO may not bring such an action to enforce its statutory right of access to a record where the President or the Director of the Office of Management and Budget certifies to the Comptroller General and Congress (1) that a record could be withheld under one of two specified provisions of the Freedom of Information Act (FOIA)<sup>1</sup> and (2) disclosure to GAO reasonably could be expected to impair substantially the operations of the government.

The first prong of this certification provision requires that such record could be withheld under FOIA pursuant to either 5 U.S.C. § 552(b)(5), relating to inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, or 5 U.S.C. § 552(b)(7), relating to certain records or information compiled for law enforcement purposes.<sup>2</sup>

The second prong of the certification provision, regarding impairment of government operations, presents a very high standard for the agency to meet. The Senate report on this section 716 limitation stated:

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<sup>1</sup>The Freedom of Information Act, 5 U.S.C. § 552, as amended, generally requires agencies to disclose documents to the public, subject to certain specified exemptions.

<sup>2</sup>More specifically, this exemption category relates to records or information compiled for law enforcement purpose, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life or physical safety of any individual.

“As the presence of this additional test [the second prong] makes clear, the mere fact that materials sought are subject to 5 U.S.C. §552(b)(5) or (7) and therefore exempt from public disclosure does not justify withholding them from the Comptroller General. Currently GAO is routinely granted access to highly sensitive information, including internal memoranda and law enforcement files, and has established a fine record in protecting such information from improper use or disclosure. Thus, in order for the certification to be valid, there must be some unique or highly special circumstances to justify a conclusion that possession by the Comptroller General of the information could reasonably be expected to substantially impair Government operations.”<sup>3</sup>

The committee report also points out that the Comptroller General’s statutory right of access to agency records is not diminished by the certification provisions of the legislation. The certification simply allows the President or Director of the Office of Management and Budget (OMB) to preclude the Comptroller General from seeking a judicial remedy in certain limited situations.<sup>4</sup>

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<sup>3</sup> S. Rep. No. 96-570, at 7-8 (1980).

<sup>4</sup> *Id.* at 7.

## Appendix II: Letter from the Honorable Paul A. Schneider

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

May 1, 2007

The Honorable Mike Rogers  
Ranking Member  
Committee on Homeland Security  
Subcommittee on Management,  
Investigations and Oversight  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Rogers:

I appreciated the opportunity to appear on April 25, 2007 before the House Committee on Homeland Security, Subcommittee on Management, Investigations and Oversight, to discuss the Department of Homeland Security's relationship with its Office of Inspector General and the Government Accountability Office.

Attached, is the updated information you requested regarding Customs and Border Protection applicants. The table shows data through the second quarter of fiscal year 2007, the most recent data that is available. If I can be of more assistance on this or other matters, please contact me at (202) 447-3400.

Sincerely,

Paul A. Schneider  
Under Secretary for Management

Enclosure

Fiscal Year	FY 2004	FY 2005	FY 2006	FY 2007*
<b>Entered Pipeline<sup>1,2</sup></b>				
1 <sup>st</sup> Quarter	1288	0	3025	2788
2 <sup>nd</sup> Quarter	1490	572	1003	2835
3 <sup>rd</sup> Quarter	11	2861	4080	--
4 <sup>th</sup> Quarter	1425	3975	2420	--
<b>FY Total</b>	<b>4,214</b>	<b>7,408</b>	<b>10,508</b>	--
<b>Discontinued<sup>3</sup></b>				
1 <sup>st</sup> Quarter	114	6	50	143
2 <sup>nd</sup> Quarter	110	47	83	147
3 <sup>rd</sup> Quarter	22	102	180	--
4 <sup>th</sup> Quarter	22	60	85	--
<b>FY Total</b>	<b>268</b>	<b>215</b>	<b>398</b>	--
<b>Started Training<sup>4</sup></b>				
1 <sup>st</sup> Quarter	468	50	344	503
2 <sup>nd</sup> Quarter	394	244	348	805
3 <sup>rd</sup> Quarter	54	289	497	--
4 <sup>th</sup> Quarter	0	343	700	--
<b>FY Total</b>	<b>916</b>	<b>926</b>	<b>1,889</b>	--
<b>Attrition<sup>5,6</sup></b>				
1 <sup>st</sup> Quarter	109	9	57	98
2 <sup>nd</sup> Quarter	90	48	61	--
3 <sup>rd</sup> Quarter	4	48	123	--
4 <sup>th</sup> Quarter	0	60	165	--
<b>FY Total</b>	<b>203</b>	<b>165</b>	<b>406</b>	--
<b>Graduated<sup>6</sup></b>				
1 <sup>st</sup> Quarter	302	39	278	371
2 <sup>nd</sup> Quarter	254	187	275	--
3 <sup>rd</sup> Quarter	43	233	365	--
4 <sup>th</sup> Quarter	0	275	489	--
<b>FY Total</b>	<b>599</b>	<b>734</b>	<b>1407</b>	--
*As of April 26, 2007; 23 classes still in session, another 45 classes of about 50 each projected to begin later in FY 2007.				
<sup>1</sup> As of April 26, 2007; data for "entered pipeline" and "discontinued" from Human Resources Management; data for "training starts", "attrition", and "graduated" from Officer Training and Development from its automated Academy Class Management System.				
<sup>2</sup> Border Patrol Academy number selections that were made.				
<sup>3</sup> Approved to go to training but dropped out while waiting to begin training course.				
<sup>4</sup> Starts occurring during the Fiscal Year (FY).				
<sup>5</sup> Trainees who left Border Patrol employment during the time they were at the Border Patrol Academy.				
<sup>6</sup> Graduates reported in FY in which they start, even if class graduates in following FY.				

## Appendix III: For the Record

### ADDITIONAL QUESTIONS AND RESPONSES

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

June 28, 2007

The Honorable **Bennie G. Thompson**  
Chairman  
Committee on Homeland Security  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

During my April 25, 2007 hearing before the Committee on Homeland Security, Subcommittee on Management, Investigations, and Oversight, you requested that I respond to certain specific questions regarding a draft memorandum that the Inspector General (IG) requested be approved and sent to DHS employees by the Secretary of Homeland Security. The answers to those questions are provided below.

#### **Question 1: Was the draft memorandum responded to?**

**Answer:** The IG provided a copy of the "draft memorandum," which consists of a one-page memo from the Secretary to employees and a several-page "frequently asked questions" proposal. The draft memorandum has served as one of the bases for discussion between senior Department officials and the IG on the important topic of communicating the Department's expectations regarding IG access to DHS's employees. This discussion is ongoing.

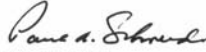
#### **Questions 2, 3: Was it distributed to DHS employees? If not why and who said it should not be distributed?**

**Answer:** The Department has not yet determined whether the IG's draft memorandum is the best way to communicate with employees about their important obligation to cooperate with the IG in a full and timely manner. We also have concerns with some parts of the memorandum, and are currently discussing them with the IG. Though the Department has not distributed the draft memorandum, we understand that the IG has provided it to some employees.

The vast majority of IG engagements are characterized by cooperation between the Department and the IG, and we are focused on improving the delivery of information to the IG. We also believe, and believe that the IG will confirm, that cooperation has been consistently improving over the past year, though we recognize that work remains to be done. We are actively engaged with the IG on this matter, and have also discussed training programs for audit liaisons, program managers and others. The Inspector General is a vital part of the senior leadership team here at the Department as he pursues economy, efficiency, and effectiveness in Departmental programs and operations, as well as preventing and detecting fraud, waste and abuse.

On behalf of the Department, thank you for providing me with the opportunity to respond to your questions. If I can be of additional assistance on this matter, please contact me at (202) 447-3400.

Sincerely,



Paul A. Schneider  
Under Secretary for Management

cc:  
The Honorable Peter T. King  
The Honorable Christopher P. Carney  
The Honorable Mike Rogers

QUESTIONS FROM THE HONORABLE CHRISTOPHER P. CARNEY, CHAIRMAN,  
SUBCOMMITTEE ON MANAGEMENT, INVESTIGATIONS, AND OVERSIGHT

**Question 1.: What is the Department's understanding of the Inspector General's (IG) role within the Department? Please answer the following questions, and if your answer is in the negative please explain the basis for it.**

**a. Do you believe that the IG can interview any Department employee in private without notifying his or her superior or any liaison officer? If not, why not?**

**Response:** Yes, however, if the employee wants someone present they should be allowed to do so. There may also be limited circumstances where it is appropriate to have a Departmental representative present for interviews with the OIG to ensure that sensitive information is identified and afforded proper protections. In evaluating such situations, we carefully consider the employee's rights under the Whistleblower Protection Act and other related authorities.

**b. Do you agree that asking employees to report any contact by the IG to their superiors will chill their willingness to speak openly with the IG?**

**Response:** Employees are not required to report contact with the OIG to their supervisors, and DHS does not take action to interfere with, impede or hinder employees' contact with the IG.

**c. Do you believe requiring a representative of management or an audit liaison to sit in on an interview with the IG would create a chilling affect on an employee's willingness to talk openly and completely?**

**Response:** Representatives of management or audit liaisons do not generally sit in on OIG interviews with Departmental employees, and DHS does not take action to interfere with, impede, or hinder employees' contact with the IG.

**d. Do you believe that all Department employees should cooperate fully with the IG and provide prompt, complete, and direct access to any materials or information requested?**

**Response:** Yes, all employees must cooperate with the Inspector General in accordance with laws and authorities. This is consistent with the guidance provided in the management directives.

**e. Do you agree that the Department should promptly provide the IG with all requested materials—including draft, privileged, and classified—without routing them through an intermediary? If not, why not?**

**Response:** IG engagements are largely characterized by extensive cooperation between the Department and the IG, and DHS routinely makes thousands of documents widely available to the OIG. Few audits entail review of materials by the Department before they are given to the OIG. For instance, the OIG had direct access to departmental documents and information during the numerous Hurricane



Katrina investigations. There were no filters between the OIG and these Katrina-related documents. Indeed, the Inspector General indicated that he views the Katrina investigations as a highlight of cooperation between the OIG and DHS.

In limited circumstances, it makes sense—for both the Department and the IG—to recognize exceptions from these general practices. For example, even though the attorney-client privilege is not waived by providing documents to the OIG (since the OIG is part of the Executive Department), it is appropriate to identify documents as privileged before they are transmitted, so that the OIG may act accordingly in preparing its report. Also, there may be other instances where accountability and prudent management practices dictate that DHS coordinate its production of documents to the OIG through a central unit. In any case, DHS will continue to work with the OIG to ensure that documents are produced in a timely fashion in all circumstances.

**f. Do you agree that the Department should refrain from taking any action that could chill an employee or contractor's communication to or cooperation with the IG?**

**Response:** The Department encourages full and complete cooperation by employees and contractors with the OIG and does not engage in activities which will inhibit communications to or cooperation with the OIG. The Department, through its Management Directive, requires all Departmental employees to cooperate fully with the OIG by disclosing complete and accurate information pertaining to matters under review—a perspective recently echoed by the Secretary and reflected in public remarks. Indeed, we do not take any actions which would interfere with, impede, or hinder communications to or cooperation with the IG; such activities would not be tolerated.

**g. Do you agree that the IG's rights and responsibilities extend to Department contractors and grantees?**

**Response:** Access to contractor records is governed by statute and regulation. Section 254d of Title 41, U.S. Code and Section 2313 of Title 10, U.S. Code authorize “the head of an agency, acting through an authorized representative. . .to inspect the plant and audit the records of. . .a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of such contracts. . . .” Both statutes separately provide that an Inspector General “may require by subpoena the production of records of a contractor, access to which is provided for that executive agency by [the language above].”

The Federal Acquisition Regulation (FAR) has implemented 41 U.S.C. § 254d specifically provides that “the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.” The scope of examination is limited to some but not all contract types, and does not appear to extend to interviews of contract personnel.

The FAR clause also authorizes access for the Comptroller General of the United States. No provision is made for audit access by an Inspector General. Neither the Defense Federal Acquisition Regulations Supplement nor the Homeland Security Acquisition Regulation (HSAR) further implements 10 U.S.C. § 2313 and 41 U.S.C. § 254d, respectively, or the FAR. In order to develop a similar standard contract clause for audit access by OIG, as was recommended by OIG in the National Security Cutter audit, the Department would be required to first publish the clause in the HSAR after notice and public comment.

With regard to grantees, the OIG is responsible for overseeing processes and parties related to the management and financial operations of DHS. The Office of Inspector General Fiscal Year 2007 Annual Performance Plan states that the Office of Audits is responsible for examining the methods employed by agencies, bureaus, grantees and contractors in carrying out essential programs and activities. Recipients of Disaster Assistance grants are monitored by the Office of Disaster Assistance Oversight, which ensures that disaster relief funds are being spent appropriately, while identifying fraud, waste, and abuse. Furthermore, any allegations of criminal, civil and administrative misconduct involving DHS employees, contractors, and grantees fall under the jurisdiction of the OIG Office of Investigations. By accepting funding from the Department, grantees agree to hold themselves to the same standard of integrity and accountability held to the Department itself.

**Question 2.: How does the GAO's right to documents and information differ from the IG's?**

**Response:** GAO and the OIG operate under different statutory authorities, granting them different rights of access and recognizing their different operational missions. In addition, the OIG is part of the Department as well as the Executive Branch while the GAO is part of the Legislative Branch. DHS must exercise proper precautions before releasing information outside the Department. For example, we must ensure that sensitive information is properly marked and handled accordingly, so that it is not disclosed inappropriately in the public domain.

**Question 3:** The IG and the GAO have both expressed that their primary concern with the Department has been an undue delay in providing them with information.

a. **Since the Department is in the end providing most, if not all, of the requested information, what is the cause of the delays, and what does the Department hope to accomplish through them?**

**Response:** The Secretary has made clear that Departmental personnel are expected to provide requested information in a timely manner, without unnecessary delays, in accordance with proper authorities and procedures. Since the inception of DHS on March 1, 2003, the Department has provided substantial assistance and support to GAO in publishing over 580 reports and testimony regarding the Department. Currently, there are approximately 300 open GAO audits of DHS. Similarly, since October 1, 2004, the Department has provided substantial assistance and support to OIG which has conducted thousands of investigations of DHS and issued over 1,000 Management and Investigative Reports. This level of oversight would not be possible without DHS cooperation. But it also results in delays when employees are trying to do their jobs and respond to this level of GAO investigation.

That being said, we must do a better job of providing information to GAO and OIG in a timely manner.

b. **To the extent the Department's General Counsel or others want to review the information, what harm is there in allowing them to do so at the same time as the IG or the GAO?**

**Response:** DHS does not require that all documents be reviewed before they are turned over. DHS produces thousands upon thousands of documents to the OIG and GAO each year. However, as the Secretary previously noted, there is a professional responsibility to review certain documents before they are disclosed to ensure that personal information, legal principles, and national security information are identified. In those instances, it would not be prudent—from a management or legal perspective—to release such materials before underlying sensitivities and legal issues related to such information could be identified. A centralized review of documents can also ensure that disclosures are consistent and complete and that all documents are properly marked in response to multiple requests.

c. **Under what circumstances is it appropriate for the Department to review documents before providing them to the IG?**

i. **For what purposes would the Department do this?**

**Response:** As discussed in previous answers, in certain circumstances, DHS has an obligation to review documents to ensure that personal information, legal principles, and national security information is protected. A centralized review of documents can also ensure that disclosures are consistent and complete and that all documents are properly marked in response to multiple requests. Moreover, it is prudent—for both the Department and OIG—to appropriately identify and mark documents as sensitive before they are transmitted to the OIG, so that the OIG may act accordingly in preparing its report. DHS will continue to work with the OIG to ensure that documents are produced in a timely fashion.

d. **Under what circumstances is it appropriate for the Department to review documents before providing them to the GAO?**

i. **For what purposes would the Department do this?**

**Response:** In certain circumstances, DHS has an obligation to review documents to ensure that personal information, legal principles, and national security information is protected. A centralized review of documents can also ensure that disclosures are consistent and complete and that all documents are properly marked in response to multiple requests. Moreover, it is prudent to appropriately identify and mark documents as sensitive before they are transmitted to the GAO, so that the GAO may act accordingly in preparing its report. DHS will continue to work with the GAO to ensure that documents are produced in a timely fashion.

**Question 4:** In his prepared testimony, Mr. Rabkin said “DHS has not made its management or operational decisions transparent enough to allow Congress to be

sure that the department is effectively, efficiently, and economically using its billions of dollars of annual funding.”

a. **Do you agree with this statement, and if not why not?**

b. **What are you going to do to address this?**

**Response:** During his February 8th Congressional testimony, the Secretary stated that cooperation with the GAO is imperative. The Secretary has already acknowledged that that Department's responsiveness is neither what it should be nor as timely as it could be. He has also acknowledged the need for greater information flow to Congress as a top priority and has required that employee performance reviews be linked to individual responsiveness to such requests.

Looking ahead, we are examining ways to improve the speed by which documents and information flow. This includes improving communication, training and outreach to the employees of the Department, revamping the organizational structure and placement of liaison offices at headquarters and in Components, and providing additional guidance to Department employees on how to interact with the GAO.

**Question 5:** In March 2004, the Department developed Directive #0820 which contains policies and procedures for interacting with the GAO. **Please explain the processes for implementing this Directive.**

**Response:** Management Directive 0820 establishes Department of Homeland Security policy and procedures on relations with the GAO. This Directive requires all employees of DHS to cooperate with all employees of GAO to the fullest extent consistent with the responsibilities of DHS and its Components.

The Department Liaison Office and component liaisons offices facilitate the GAO's efforts to gain information from the Department. The Liaison Office fosters the GAO's access to materials by providing direction and identifying knowledgeable employees with relevant and up-to-date information. In addition, the Liaison Office makes arrangements for the GAO's physical access to DHS facilities and personnel at Headquarters and in the field office locations. It also ensures comprehensive and consistent responses to GAO requests, and identifies sensitive information (where necessary) for proper marking and handling. Moreover, the Liaison Office makes arrangements for the GAO's entrance and exit conferences with Department personnel. Further, the Liaison Office provides an early-warning mechanism for senior DHS management to identify issues that might arise during a GAO engagement or audit.

a. **How has the Directive been implemented in DHS?**

**Response:** On behalf of the Secretary, the Under Secretary for Management has overall management authority for all DHS relations with GAO and responsibility for implementation of all aspects of this Directive through DHS. The Under Secretary for Management carries out this responsibility through the Chief Financial Officer (CFO), in coordination with senior DHS officials.

The CFO has designated a Departmental GAO Liaison (DGL) to be the primary management official within DHS responsible for implementing this Directive and managing all matters involving relations between GAO and DHS.

b. **Do you have a sense as to whether program officials and component liaisons have interpreted the Directive to mean that lawyers are to review almost every document requested before it can be provided to GAO?**

**Response:** The Management Directive does not require DHS counsel to review every document before it is turned over to GAO.

c. **Do you interpret the Directive as written or implemented to be that attorneys are to review all documents before providing them to GAO?**

**Response:** No.

d. **Who in the Department is responsible for periodically reviewing this Directive and revising it when appropriate?**

**Response:** The Under Secretary for Management is the primary official within DHS responsible for implementing this Directive and is authorized to manage, on behalf of the Secretary, all matters involving relations between GAO and DHS, including all DHS Components, as well as the review and revision of the Management Directive. We are currently reviewing the Department's guidance, procedures, and training with respect to these issues.

**Question 6:** In your testimony you said that after talking to representatives from all Department components, you found that “there is a general feeling that information provided will be used for ‘Gotchas.’” **Does this mean that Department employees are reluctant to cooperate with the IG or the GAO?**

a. **Would you agree that this is a problem?**

**Response:** No, Department employees are not reluctant to cooperate with the IG or the GAO, but there has been concern in the past about how the information will be used.

**b. What can you do to resolve it and convey to the Department's employees the important function both GAO and the IG play in a well-run department?**

**Response:** I am striving to improve communication and guidance to the Department's employees, and engage leadership to focus on the importance of the IG and GAO to a well-run department.

**Question 7.: When is it appropriate for the Department to refuse to provide information to the GAO?**

**Response:** Management Directives identify situations where more detailed review is required prior to release of information to the GAO. For example, this might include documents related to ongoing criminal, civil or administrative investigations or proceedings, law enforcement sensitive information, deliberative information, intelligence information, and documents of a third-party or agency. In many cases, documents may ultimately be produced following a detailed review.

**a. Would you agree that in such situations, the Department should clearly and concisely tell the GAO that it is refusing to provide information, and why?**

**Response:** Yes. And the Department has done so on those few occasions where this has happened.

**Question 8.: GAO has some fundamental concerns about the processes the Department has put in place for dealing with the GAO. Are you willing to take a fresh look at all these processes and address the GAO's concerns?**

**Response:** Yes.

**Question 9.: What are your impressions of the cooperation that your agency's components have with GAO, including the role of the Department's Office of General Counsel, compared with your prior experience in DOD?**

**Response:** It is difficult to directly relate my experiences at the Department of Defense (DOD) with those at DHS, because these are two agencies at very different stages of development. The Department of Homeland Security is still in its earlier stages of development.

That said, the level of cooperation that exists between DHS and GAO is not as great as that between the GAO and the DoD.

**Question 10.: Secretary Chertoff sent a memorandum to all his component heads directing them to take corrective actions to improve on the Department's ability to deliver past due reports and answer Congressional questions in a timelier manner. Secretary Chertoff has stated in a recent testimony that he is making this issue a priority. Please provide specific plans on how the Department's leadership will ensure that all components of the Department will respond in a timelier manner.**

**a. Please identify any performance goals or benchmarks that both Congress and the Department's leadership can use to measure any improvement?**

**Response:** As of September 1, 2007, the Executive Secretariat's office has this year managed 78 individual Questions for the Record (QFR) sets issued by House and Senate Authorization Committees following a formal hearing. The Office of the Chief Financial Officer managed 16 individual QFR sets issued by the House and Senate Appropriations Committees. These 94 sets represent 2,630 individual questions. 71 of these 94 sets have been answered, cleared by the Office of Management and Budget, and returned to the requesting Committee. Our average response time for QFR sets is 33 business days.

All letters sent to DHS by a Member of Congress are answered with at least an interim response in 10 business days.

In 2007 (to date), one-time and recurring reports required by authorizing legislation total 86, with one-time and recurring appropriation reports totaling 460. As an educated guess, easily well over 100 reports annually require an average of more than 300 man hours to produce at DHS. Many more still consume a bare minimum of 100 hours prior to transmittal.

**b. Please describe with specificity any programmatic changes you plan to make and what impact will these changes have.**

**Response:** Performance in this area is tracked and monitored by the Department's Management.

c. **Please provide the methods the Department plans to use to inform Congress of any changes or improvements in the Department's performance.**

**Response:** Since January, we have been sending on average, one or two reports to the Hill each day. Our QFR response has improved dramatically from last year. The results of the Department's leadership becoming engaged are clear. Responding to Congress is a priority and we are working to complete all requests in a timely manner.

d. **The memo addresses being more responsive to Congress but does not address providing timely information to GAO. As you know, GAO is an arm of Congress. What will the Department do to convey its commitment to be more responsive to GAO?**

**Response:** The need to improve the Department's responsiveness to the GAO is being stressed by the Department's leadership.

**Question 11.:** In July 2006, the IG provided the Deputy Secretary with a letter detailing the role of the IG and a series of frequently asked questions. Please answer the following questions concerning this letter:

a. **What happened to it after it was given to the Deputy Secretary?**

**Response:** It was reviewed by several organizations within the Department.

b. **Did the General Counsel's office review it?**

**Response:** Yes.

c. **Was any response—formal or informal—provided to the IG?**

**Response:** The draft memorandum has served as one of the bases for discussion between senior Department officials and the IG about the proper way to communicate the Department's expectations regarding IG access to DHS's employees. That discussion is ongoing.

d. **Were there were any discussions between Department officials and the IG regarding potential concerns with the letter?**

**Response:** Yes.

e. **If there were no such discussions, why not?**

**Response:** There were discussions.

i **Was it appropriate not to hold such discussions if the Department had concerns about its contents?**

**Response:** There has been ongoing discussion regarding the details of the draft memoranda.

f. **Will you recommend that the letter be sent out, and if not why not?**

**Response:** I would not recommend the memorandum written be sent out. I do not agree with every proposition in the draft memorandum, including the strict prohibition on *any* review of documents produced to the IG, and on *any* assistance during witness interviews.

**Question 12.:** What steps have you taken since this hearing to communicate the importance of cooperation with the IG and the OIG to your colleagues and subordinates?

**Response:** I have discussed this matter with the leadership at DHS headquarters and I have raised the issue with the representatives of the DHS operating components at the Department's Management Council, which I chair.

**Question 13.:** What steps have you taken since this hearing to communicate Congress's ongoing concern over the GAO and the IG's difficulties to your colleagues and subordinates?

**Response:** I have discussed this matter with the leadership at DHS headquarters, and I have raised the issues with the representatives of the DHS operating components at the Department's Management Council, which I chair.

QUESTIONS FROM THE HONORABLE MICHAEL D. ROGERS, RANKING MEMBER,  
SUBCOMMITTEE ON MANAGEMENT, INVESTIGATIONS, AND OVERSIGHT

**Question 14.:** As the Under Secretary responsible for management and budgets across the Department of Homeland Security, please provide for the following information regarding the Department's canine teams:

a. **Any DHS component which currently uses canine teams (in addition to CBP, USSS, and TSA);**

b. **A summary of each canine training program operated by a DHS agency;**

**Response:** USSS

The United States Secret Service (USSS) has 57 Explosive Detection Canines (w/ 57 handlers). The USSS has 14 Emergency Response Canines (w/14 handlers). USSS has a total of 71 Canine Teams.

*ICE*

The ICE Federal Protective Service (FPS) currently maintains 60 canine explosives detection dog teams strategically located across the country.

*CBP*

As of March 6, 2007 CBP employs 1,234 canines and canine teams.

*USCG*

The Coast Guard has 18 teams (one handler and one canine per team).

*TSA*

TSA's canine program deploys only explosives detection teams under the National Explosives Detection Canine Training Program (NEDCTP). It is operated cooperatively in partnership with local law enforcement agencies and transportation industry stakeholders. The canine handlers come from local law enforcement (airport/mass transit) agencies. Currently, TSA has 441 teams deployed in aviation and mass transit systems, with a target of 478 deployed teams by the end of fiscal year 07.

Shown below are the funding levels in fiscal year 07 and those requested for fiscal year 08, for each DHS agency's canine program.

**c. The Fiscal Year 2007 funding level and Fiscal Year 2008 budget request for each DHS agency's canine program;**

*USSS*

Overall Approved Budget for Canine Program fiscal year 07: \$241,364.

Overall Proposed Budget for Canine Program fiscal year 08: \$371,029.

*ICE*

The FPS Canine Program is approximately \$7.74 million in fiscal year 2007, or \$129,000 per team. This includes the full cost of the FPS inspector and the cost of care, feeding and annual recertification training for the dog. The fiscal year 2008 cost will be approximately \$8.05 million.

*CBP*

While there is no discrete budget for canine enforcement, CBP estimates a projected spending level for fiscal year 2007 of \$130.7 million and a requested funding level for fiscal year 2008 of \$176.3 million.

*USCG*

The Coast Guard's recurring annual budget for one Canine Detection Team (CDT) is \$9,600 per canine and \$73,000 per handler (handlers also perform other MLE/FP duties as needed). The total funding level for 18 teams is \$1.5 million.

*TSA*

Fiscal year 07 funding is \$32 million; fiscal year 08 funding is \$35.5 million.

**d. The number of canines currently utilized by each DHS agency, and an assessment of the existing unmet need in each DHS agency for additional canines; and**

USSS: At this time the USSS is short three (3) Explosives Detection Canines.

ICE: The FPS will not require any additional canine teams for fiscal year 08.

CBP: CBP has no unmet needs for canines in fiscal year 2008.

USCG: Coast Guard currently has a sufficient number of CDTs.

**e. An assessment of the percentage of detection canines utilized by DHS which is bred domestically compared to the percentage which is acquired from vendors overseas.**

The USSS utilizes Belgian Malinois canines. All of the USSS canines are purchased from an American company, the Vohne Liche Kennels, in Indiana. The Vohne Liche Kennels acquires its dogs from Germany. None of the canines are bred domestically.

The FPS explosives detection dog teams are trained at Auburn University. Auburn University provides the dog at the time team training begins. A check of the University records indicates that 19 of the FPS dogs were bred domestically and 41 were bred overseas.

None of CBP's dogs are purchased from overseas vendors; however most of the domestic vendors that supply dogs to CBP utilize and procure a portion of their dogs from overseas kennels.

The U.S. Coast Guard acquires all canines from CBP.

*You have had a long career in the Federal Government, including serving as a Principal Deputy Assistant Secretary of the Navy.*

**Question 15.: Based on your past experience, what are some of the differences between the process at the Defense Department compared to the process at DHS for addressing inquiries from the GAO and DoD Inspector General?**

**Response:** It appears in general that the major difference is that there are fewer reviews of material by DOD before it is released to GAO and DOD Inspector General. The other difference is the role of the liaison office (at the equivalent to the operational component level) after the start of a review. In DOD, it appears they have a very small role after the start of a specific review.

**Question 16.: Are there any aspects to the way DoD responds that you have instituted, or plan to institute, at DHS?**

**Response:** We are looking at ways to expedite the flow of information to the OIG and GAO by streamlining the process prior to releasing the requested information.

*You point out in your statement (page 1) that the relationship between DHS and the Inspector General differs from its relationship with GAO.*

**Question 17.: Could you please elaborate on this difference and explain the differences in procedure for the response by DHS to each?**

**Response:** GAO and the OIG operate under different statutory authorities, granting them different rights of access and recognizing their different operational missions. In addition, the OIG is part of the Department and thus the Executive Branch while the GAO is part of the Legislative Branch. DHS must therefore exercise proper precautions before releasing information outside the Department. For example, we must ensure that sensitive information is properly marked and handled accordingly, so that it is not released inappropriately in the public domain.

*The Subcommittee has been advised that when DHS employees meet with auditors, the supervisors of those employees may sit in on the meetings.*

**Question 18: Is this the usual practice?**

**Response:** There is no requirement for the presence of a management representative or audit liaison at interviews. We encourage DHS employees to speak openly and frankly with auditors and to provide information. Indeed, Department representatives attend very few such meetings.

There may be limited circumstances where it might make sense to have a Departmental representative present for interviews to ensure that sensitive information is identified and given proper protection. Just because a DHS liaison attends a meeting does not inhibit an individual's opportunity to convey important information. The presence of a Departmental representative is in no way designed to inhibit the free flow of information to auditors.

When an employee requests a Department representative to accompany him/her to a meeting, we will consider such a request and honor it when appropriate. In evaluating such situations, we carefully consider the employees' rights under the Whistleblower Protection Act and other related statutes.

**Wouldn't the presence of a supervisor have a chilling effect on what an employee may say?**

**Response:** DHS does not require a supervisor to be present at an interview with auditors, and DHS does not take action to interfere with, impede, or hinder employees' communications.

*In your capacity, you oversee the Audit Liaison Office, which is housed within the Office of the Chief Financial Officer. The Audit Liaison Officer works with his or her counterparts in the Department's components to respond to requests from the GAO and Inspector General.*

**Questions 19: Could you please elaborate on the roles and responsibilities of the Audit Liaison Officer at the Headquarters level? In the component agencies?**

**Response:** The role and responsibilities of the Headquarters Audit Liaison are spelled out in Management Directive 0820.

**Question 20: Do you believe the Audit Liaison Officer has sufficient authority over the liaison officers in the Department's components?**

**Response:** Yes. Pursuant to MD 0820, the Departmental GAO Liaison is the primary management official within DHS responsible for implementation of this Directive and authorized to manage, on behalf of the Secretary, all matters involving relations between GAO and DHS. The DGL is authorized to provide oversight and direction to all DHS Components relating to relations with and responding to GAO.

**Question 21.: Does the Audit Liaison Officer at DHS Headquarters have direct line authority over the audit liaison officers in the Department's**

**component agencies? If not, why not? Would operations be improved if the Audit Liaison Officer had direct line authority?**

**Response:** The DGL does not have direct line authority over the component audit liaison officers, but has authority under the Management Directive to provide oversight and direction to all DHS components regarding relations with and responding to GAO.

**Question 22.: How many employees serve in the Office of the Audit Liaison Officer? Is this number sufficient?**

**Response:** The Office of the Audit Liaison Officer is sufficiently staffed. The Office consists of a Director and a staff of four management analysts, and will be adding an additional staff member. The DHS Audit Liaison Office relies upon the day-to-day work of the more than thirty component liaisons and other DHS employees handling the GAO and OIG interview and document requests, as well as the audit follow-up for implementation of GAO and OIG recommendations.

**Would additional staff improve the response time to GAO and the Inspector General?**

**Response:** No.

*You indicate in your statement (page 3) that the Department maintains Management Directives regarding its interaction with GAO and the Inspector General. You also state that the Directives are adequate, but the problem is in "execution" of the Directives.*

**Question 23: When were these Directives issued?**

**Response:** The Management Directive on GAO is dated June 25, 2003 and the Management Directive on the IG is dated June 10, 2004.

**Do you believe they should be updated?**

**Response:** In April, DHS started a review of all our Management Directives with the intent to update the directives as necessary to reflect current policy.

**Question 24: Do you know how these Directives compare to similar directives in other Federal Cabinet departments?**

**Response:** We have compared our Management Directive 0810.1, governing relations with the IG, with the equivalent directives issued by Treasury, Justice, Defense and Commerce. The DHS Management Directive is consistent with those of the other Executive Branch agencies.

Common factors include:

- Requiring that all employees cooperate fully with their OIG and report any complaints of possible activities violating law, rules, or regulations to the OIG;
- OIG is to have access to all records, reports, audits, reviews, documents, and other material available regardless of the program and operation;
- OIG is an independent and objective Component within DHS responsible for investigating fraud, waste, and abuse uncovered as a result of audits, evaluations, and inspections; and is responsible for informing the Secretary and Congress of serious problems, abuses, or deficiencies relating to programs and operations within the Department.

We have also compared DHS Management Directive 0820, governing relations with GAO, to the equivalent directives issued by the Treasury, Defense, Energy, and Commerce Departments. The DHS Management Directive is essentially consistent with the directives at these other agencies.

**Question 25.: Have you reviewed these Directives to assess whether they could be improved?**

**Response:** We are reviewing Management Directives 0810.1 and 0820.

**Question 26.: How are DHS employees made aware of these Directives, and how is their compliance with these Directives monitored?**

**Response:** Directives are posted on the DHS intranet Web site and made available to all DHS employees.

Component heads are directly responsible for ensuring compliance with Management Directives 0810.1 and 0820. They are also responsible for assuring the widest possible dissemination of the Management Directives within their Component, and they may issue further instructions for implementing departmental policy related to the OIG within their Component.

**Question 27.: You indicate in your statement that there are "serious concerns" with execution of the Directives. Could you please give examples of some of these concerns and what steps you are taking to address them?**

**Response:** As stated in my testimony, I am concerned that while the Management Directives provide a consistent process, the Department's components are not



implementing or executing this guidance in a consistent manner across the entire Department. The use of liaison offices in each organization is inconsistent.

Looking to the future, we are examining ways to improve speed by which documents and information flow. This includes improving communications, training, and outreach to employees across the Department, revamping the organizational structure and placement of these liaison offices, both at Headquarters and in the operational components, and providing additional guidance to Department employees on how to interact with the IG and GAO through further revising or updating instructions to personnel.

Leadership needs to get involved at the right level, and if necessary, at the highest level.

*You indicate in your statement (page 3) that Departmental lawyers do not review every document and are not present in every interview.*

**Question 28. When are departmental lawyers involved in the process of responding to requests from the GAO and Inspector General?**

**Response:** The vast majority of requests from GAO and the OIG are characterized by cooperation from Department, and very few entail legal review of responses to GAO and OIG requests. DHS produces thousands of documents to the OIG and GAO each year. As discussed in previous answers, a legal review of documents is appropriate in limited circumstances, including where there is a particular need to ensure that proper procedures are adhered to, specific information warrants appropriate safeguards, or disclosures must be consistent among various reviewing bodies. In certain circumstances, DHS counsel have a legal and ethical obligation to review documents to ensure that personal information, legal principles, and national security information are protected.

Review of documents by counsel also ensures that disclosures are consistent and complete. A centralized review of documents can also ensure that disclosures are consistent and complete and that all documents are consistently marked in response to multiple requests.

**Question 29.: Are there standard criteria by which a determination is made when lawyers review documents and attend interviews? If so, what are those criteria? If not, why not?**

**Response:** Management Directive 0820 provides that DHS employees have the responsibility to review GAO document requests using the sensitive information checklist appended to the Directive, and when sensitive information is potentially implicated, request and follow the advice of counsel to ensure the legal obligations of DHS are met. If a response involves potential access to sensitive information on the checklist, e.g., classified, law enforcement or homeland security, and grand jury, the GAO coordinator for the Component possessing the information shall ensure the assistance of counsel is sought within that Component to ensure any legal issues are considered.

*You indicate in your statement (page 4) that the "Secretary has already put in place a mechanism to create incentives for DHS officials to make information flow to Congress a priority, and has required that employee performance reviews be linked to individual responsiveness to such requests."*

**Question 30.: Could you please describe the mechanism the Secretary put in place and some of the incentives for DHS officials?**

**Response:** The attached memorandum contains the guidance the Secretary has issued.

**Question 31.: An employee's performance review generally contains many elements. How is responsiveness to Congressional requests weighted and considered?**

**Response:** It depends on how large of a role an individual has in responding to the congressional requesters. For a large number of people in the Department, they have no role in responding to the Congress, so it would not be a factor. For those in an area where there is extensive Congressional reporting, it would be a factor that would be considered by the person's supervisory chain of command.

*You indicate in your statement (page 4) that you are "perplexed" by GAO's complaints.*

**Question 32.: Which of GAO's complaints do you believe have merit and which do not?**

**Question 33.: Why do you think GAO feels so strongly about the difficulties GAO auditors claim they have in obtaining information from DHS?**

**Response:** We feel that the Department's cooperation with the GAO has been good. In light of that substantial cooperation, I testified that I was a bit perplexed

by the level of GAO's complaint. We understand that GAO has had some complaints, but many of these complaints have been addressed and resolved. Nevertheless, we have taken notice that GAO still raises such concerns, and we understand we need to continue to strive towards improvements in order to ensure the timeliness of the Department's responsiveness. GAO's only complaint is that the Department is not timely in its response to its requests.

**Question 34.: What steps are you taking to improve the working relationship with GAO?**

**Response:** The Department is taking many steps to improve its responsiveness to GAO, including instituting better coordination among the Component's liaison officer and the Headquarters DGL. There should also be more frequent meetings with GAO and OIG at the Chief Financial Officer (CFO) level to identify specific and systematic issues, which the CFO and the Under Secretary for Management (USM) will address with DHS Management to improve the responsiveness of the Department.

We are examining ways to improve the speed by which documents and information flow. This includes improving communication, training and outreach to the employees of the Department, revamping the organizational structure and the placement of liaison offices at headquarters and in Components, and providing additional guidance to Department employees on how to interact with the GAO.

*You indicate in your statement (page 5) that DHS has provided "information for over 250 OIG Management Reports, 1,350 OIG Investigative Reports, and 600 GAO reports and testimony."*

**Question 35.: Do you know how these numbers compare to other Federal agencies?**

**Response:** No.

**Question 36.: Can you estimate how many employee hours were required to provide this information?**

**Response:** The Department does not yet have a formal tracking process to calculate the hours spent or the costs of responding to particular requests. We receive requests for information from the GAO and OIG on a daily basis. Depending upon the nature of each request, time and resources are expended to perform research, solicitation of information from one or more DHS components, and drafting a response, which—depending upon the subject matter—can take anywhere from a few hours to several weeks or months. Following drafting of each response, senior leadership must review and, where appropriate, executive branch clearance must be obtained, adding more time.

**Question 37.: Do you know how many GAO and Inspector General audits and investigations are currently open within DHS?**

**Response:** Approximately 500 GAO and OIG audits are open throughout the Department with either ongoing audit work or open recommendations.

You indicate in your statement (page 5) that DHS must respond to 88 congressional committees and subcommittees. You also indicate that DHS provides approximately 2,000 briefings and hearing statements per year.

**Question 38.: Do you agree with the 9/11 Commission recommendation that Congress should centralize its oversight of DHS in one committee in the Senate and House of Representatives?**

**Response:** DHS takes very seriously its responsibility to protect the homeland—a responsibility that is of course shared with the Congress, among others. To further both of these responsibilities, the Administration has expressed its strong support for Congress adopting one of the 9/11 Commission's most important recommendations: to streamline congressional oversight of DHS. This would be one of the easiest and most direct ways that Congress could carry out our shared responsibility, by allowing DHS to focus more time and resources on its crucial mission of securing the homeland, while retaining an appropriate level of oversight.

**Question 39.: What impact does responding to 88 congressional committees and subcommittees have on departmental operations?**

**Response:** In my testimony I provided the major statistics. Supporting these efforts drives an extensive workload in the Department.

*You indicate in your statement (page 5) that DHS does "not provide consistent guidance across the Department" in how to respond to GAO and Inspector General inquiries.*

**Question 40.: Could you please provide some examples of how this guidance is not consistent and what steps you plan to take to address this issue?**

**Response:** DHS is the result of the integration of 22 agencies. Many of the legacy organizations, such as the former U.S. Customs Service, the former Immigration and Naturalization Service, U.S. Secret Service, and U.S. Coast Guard had legacy processes regarding interactions with OIG and GAO; these processes are specific to their organization. We are working to integrate these processes and ensure that they support the execution of DHS Management Directives in order to provide proper and timely access to GAO and the OIG. Indeed, we are examining ways to improve the speed with which documents and information are produced in response to appropriate requests. This includes improving communications, training, and outreach to the fine employees of the Department; possibly revamping the organizational structure or placement of the Liaison Office; and providing additional or updated guidance to Department employees on how to interact with the OIG and GAO. We should make our expectations more clear to the people on the front lines.

We are examining ways to improve the speed by which documents and information flow. This includes improving communication, training and outreach to the employees of the Department, revamping the organizational structure and the placement of liaison offices at headquarters and in Components, and providing additional guidance to Department employees on how to interact with the GAO.

*You indicate in your statement (page 5) that some of the component agencies in DHS "are using procedures and practices that were from their parent organizations before they became part of DHS."*

**Question 41.: Which components are you referring to?**

**Response:** The former U.S. Customs Service, the former Immigration and Naturalization Service, U.S. Secret Service, and U.S. Coast Guard.

**Question 42.: In light of the Management Directives the Department issued, why do you think these components are still following procedures that date back before 2003 when the Department was created?**

**Response:** These legacy organizations had processes and regulations at the detail operational level, which are specific to their organization. In a similar vein, we are considering better ways to communicate our expectations regarding GAO and OIG inquiries to our employees.

**Question 43.: What steps are being taken to correct this issue?**

**Response:** We are examining ways to improve the speed by which documents and information flow. This includes improving communication, training and outreach to the employees of the Department, revamping the organizational structure and the placement of liaison offices at headquarters and in Components, and providing additional guidance to Department employees on how to interact with the GAO.

*You indicate in your statement (page 5) that "the use of liaison offices in each organization is somewhat inconsistent."*

**Question 44.: Are the liaison offices in each component agency located within the same office organizationally, such as the Office of the Chief Financial Officer? If not, why not?**

**Response:** Depending upon the operational needs of each DHS component and the legacy structures of the components, the audit liaison offices are located in various parts of the component organizations, such as the Office of the Chief Financial Officer, the Office of Policy, and the Office of the Assistant Secretary.

**Question 45.: What steps are you taking to improve the consistency with which liaison offices are used across component agencies in DHS?**

**Response:** We are considering various ideas and options for the proper use of liaison offices throughout the Department. We want to make sure that there is an appropriate structure in place to provide proper and timely responsiveness to oversight requests. In addition, the liaison offices are critical to providing training and outreach to Department personnel in order to ensure that expectations are clear and guidance is implemented in a consistent manner. Also, liaison offices may be used as a mechanism to improve awareness of issues that might arise during GAO engagements.

**Question 46.: What training is provided to Audit Liaison Officers?**

**Response:** Through quarterly liaison meetings and daily interaction with the component liaisons, the DHS audit liaison office provides continuous training for the component liaisons. Using a "best practices" concept, component processes are shared across organizational lines to enhance the liaison process throughout the entire Department. In this way, the DGL can coordinate engagements throughout the Department, provide outreach by communicating the Department's guidance and expectations, and provide continuous training for component liaisons. Once again, we

are considering options to issue guidance to liaison officers in an effort to ensure consistent application and execution of the Department's directives.

*On April 13, 2007, Chairman Thompson and Ranking Member King wrote to Secretary Chertoff regarding the Department's overdue reports for Congress.*

**Question 47.: What is your role in the Department's preparation and review of reports requested by Congress?**

**Response:** My office reviews all reports prepared by DHS at the request of Congress. My role, as Under Secretary for Management is to approve and sign out appropriations reports to Congress. In some cases I also approve and sign some of the authorization reports depending on subject matter.

**Question 48.: Why does it take so long to prepare and submit a report?**

**Response:** Depending on the nature of the topic is for the report, it could take a while to collect and compile the necessary data.

**Question 49.: Why are there so many overdue reports?**

**Response:** Because there are many reports which require extensive data to be compiled and then reviewed before approval, many reports do not make the deadline. However, the significant volume of reports requested from the Department also adds to the timeline.

**Question 50.: What steps are you taking to reduce the backlog and improve the Department's responses to Congressional requests for reports and information?**

**Response:** The Secretary sent a memorandum to all component heads on February 7, 2007 which expressed his view about the Department's delivery of reports and responses to Congress in a timely and accurate manner. In the memorandum, direction was given to establish performance measures for employees as well as hold the leadership of that component responsible for overdue responses. The Department's management is aware of the issue and is working to track our performance.

*The Integrated Deepwater System Program (Deepwater) is a \$24 billion, 25-year acquisition program designed to replace and modernize the Coast Guard's aging and deteriorating fleet of ships and aircraft.*

*The DHS Inspector General has released audits reflecting that the Coast Guard's Deepwater acquisition program has suffered from apparent mismanagement. It is imperative that the Coast Guard is provided with the highest quality and most capable equipment to continue to protect our Nation's ports, coasts and waterways. At the same time, though, it is important that the assets the Coast Guard acquires are procured in an efficient and cost-effective manner to ensure that taxpayer dollars are not spent in an irresponsible manner.*

**Question 51.: How are you working with the Coast Guard to improve the contract oversight in the Deepwater program?**

**Response:** The Chief Procurement Officer (CPO) has been actively engaged in the oversight of the Deepwater program since the inception of the Department. Separate from the general oversight of the USCG Acquisition Operations, Deepwater has been the specific subject of numerous reviews by the CPO and CPO Staff. CPO and the Acquisition Oversight Staff have been part of every major review of the program beginning with the review of the updated ORD to account for changes in requirements brought on by the attacks of September 11, 2001. We have reviewed each change to the Program and each quarterly report to Congress as well. The CPO Acquisition Oversight staff participated with the Deepwater staff in several GAO and DHS OIG reviews conducted over the past 3 years. The DHS CPO was instrumental in advising USCG to seek outside assessment on the critical portions of the Deepwater acquisition. The DHS CPO Acquisition Oversight Team was one of the first offices outside USCG to review and comment on the application of Earned Value Management data on the program and sought refinement of several cost estimates as a result of that review. Reviews of the Deepwater program have been conducted by several levels of DHS Management and the CPO and CPO Acquisition Oversight staff have been intimately involved in each. The DHS CPO Acquisition Oversight Team closely reviewed, for example, the entire process for assessing and awarding the first Award Term for the Deepwater contract.

**Question 52.: What steps should DHS take in the short-run—and long-run—to ensure the Deepwater program is managed most efficiently and cost-effectively?**

**Response:** First and foremost, the DHS CPO is supporting the USCG in its implementation of the USCG Blue Print for Acquisition Reform. This initiative, begun by the Commandant shortly after assuming command, will fundamentally change the way that the USCG does business and will focus assets in the areas of require-

ments generation, program management, contracting and logistics where needed and when needed. DHS CPO supports the request to Congress by USCG to have personnel costs shifted from Deepwater specific appropriations to the general Operations Expense appropriation so as to give the USCG the flexibility to place human resources in the most efficient manner possible and no longer be constrained by rigid personnel limitations in program specific appropriations. The DHS CPO and the CPO's Acquisition Oversight Team will continue to engage the USCG at every level in the routine oversight activities involved in the review of Acquisition documents such as Acquisition Program Baselines, Acquisition Plans, and other selected contract documents. The Acquisition Oversight Team is part of the departmental executive review of each major action and attends every meeting involving Deepwater with DHS external organizations. As circumstances arise, the DHS CPO has the ability and commitment to assign special reviews to the Acquisition Oversight Team and has done so recently with respect to the coordination of the updated set of Acquisition Documentation including an updated Program Baseline and Acquisition Plan. The Team has recently reviewed the Acquisition Plan for the Fast Response Cutter (FRC) B-Class and has submitted numerous comments on the draft plan. This plan provides evidence of the changes that have taken place in the Deepwater program in the past several months as it marks the departure from using Systems Integrator to acquire a major Deepwater Asset. DHS recently issued an Acquisition Decision Memorandum laying out a variety of new tasks requiring the Coast Guard to submit for review and approval numerous plans and estimates relating to the acquisition of the National Security Cutters (NSC) and the Fast Response Cutters (FRC) in the near term. The Department has placed limits on the Coast Guard's contracting authority pending the receipt and approval of these documents. Additionally, a longer term plan has been agreed upon between the CPO Acquisition Oversight Team and the Deepwater program concerning the consolidation and alignment of all critical program documentation, including a comprehensive update to the Program Acquisition Plan, Implementation Plans and Acquisition Program Baseline.

**Question 53.: How will you achieve the balance between procuring the highest quality equipment, while ensuring procurements are cost-effective to protect taxpayer dollars?**

**Response:** High quality will, in the long run, yield the lowest overall cost and our goal in acquisition and contracting for complex systems is to seek the "best value" solution, considering price, quality, and other factors. When the mission becomes the placement of a contract in the shortest possible timeframe and at the lowest apparent cost, both quality and cost will suffer. The balance is achieved by carefully considering not just the instant contract cost, but the life-cycle costs as well. This requires that the requirements be fully vetted and considered before soliciting industry and that industry response in the competitive marketplace be thoroughly and carefully considered before making an acquisition decision. At the bottom line, this process, for major systems, requires a very experienced set of professionals from engineering, logistics, and business disciplines working as a team with operators to plan, evaluate and negotiate a complex contract with acknowledged risks and a fair and equitable approach to managing those risks, including the schedule, the price to be paid, and the way the contract will be administered. Those are the keys to providing the best quality product to the operators at the best overall price to the nation.

*In one of its Deepwater reports on the National Security Cutter, the Inspector General indicated his office "encountered resistance" from the Coast Guard and the contractor during the OIG's review of the structural design and performance issues related to this vessel. In a rare public rebuke, the Inspector General wrote that "such behavior by an auditee is contrary to the Inspector General Act. . .and is inconsistent with the intent of DHS Management Directive[s]."*

**Question 54.: Are you aware of the problems the Inspector General indicated he had in obtaining information from the Coast Guard on the National Security Cutter?**

**Question 55: What steps are being taken to improve the Coast Guard's responses to the Inspector General on reviews of Deepwater and other programs?**

**Response:** The Coast Guard enjoys an ongoing positive relationship with the OIG. This is evidenced by the OIG's comments in the February 9, 2007 123-foot Patrol Boat Audit, which stated that "The Coast Guard was responsive to all of our requests for interviews, briefings, information and documentation requests associated with our review."

With respect to the audit of the Deepwater program and the National Security Cutter audit, it is my understanding that once senior Coast Guard officials were

made aware of the underlying issues, the matter was quickly resolved with the OIG. The Coast Guard and IG established a principled framework by which there was mutual cooperation. In fact, the IG has stated that he has had no other concerns regarding this issue and now considers this example to be an area of successful accommodation and cooperation. Senior Department officials are continuing their ongoing dialogue with the OIG to improve information and ensure that the IG obtains information in a timely manner.

*The Inspector General provided to the Office of General Counsel in July 2006 a draft memo that the Secretary could send to DHS employees highlighting the importance of cooperating with Inspector General reviews. Apparently, the memo was never sent.*

**Question 56.: Have you seen the draft memo? If so, what are your thoughts regarding its contents?**

**Response:** Yes. I do not agree with every proposition in the draft memorandum, including the strict prohibition on *any* review of documents produced to the IG, and on *any* assistance during witness interviews.

**Question 57.: Do you believe it would be helpful if the Secretary sent this or a similar memo to all employees underscoring the importance of cooperating with Inspector General and GAO reviews?**

**Response:** The draft memorandum has served as one of the bases for discussion on the proper way to communicate the Department's expectations regarding IG access to DHS's employees. That discussion is ongoing. We are currently looking at various means of communicating improved guidance to DHS employees to enhance cooperation with the Inspector General and the GAO.

*The Department of Homeland Security handles a wide range of sensitive and classified information.*

**Question 58.: What specific safeguards does the Department have in place when classified material is requested by GAO or the Inspector General?**

**Response:** The Department is very diligent about taking proper steps to ensure the proper marking and handling procedures are implemented with respect to classified national security information. For example, Management Directive 0810.1 instructs Department personnel to advise the OIG when providing classified information, and Management Directive 0820 requires DHS employees to consult with appropriate officials when the Department intends to provide classified information to the GAO, so that they can be clearly notified as well.

**Question 59.: What specific safeguards are in place when personal information that may be protected by the Privacy Act is requested by GAO or the Inspector General?**

**Response:** The Department is similarly vigilant about the protection of personal privacy information. In such instances, the Department identifies the sensitive information and notifies the GAO and OIG that appropriate protections and safeguards should be followed. We aim to be extremely careful about the disclosure of such sensitive personal information.

If a GAO request for information involves potential access to sensitive information on the checklist, e.g., personal Privacy Act protected information, the GAO coordinator for the Component possessing the information shall ensure the assistance of counsel is sought within that Component to ensure any legal issues are considered. In addition, the GAO Agency Protocols, GAO-05-35G, provides that GAO will protect information, including personal information, to the same degree it would be protected at the Federal department.

